

4-18-2013

In the Matter of the Estate of Melvin Peterson Clerk's Record v. 3 Dckt. 40615

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LAW CLERK

Vol. 3 of 4

**SUPREME COURT
OF THE
STATE OF IDAHO**

IN THE MATTER OF:
THE ESTATE OF MELVIN PETERSON,
DECEASED

IDAHO DEPARTMENT OF HEALTH AND WELFARE

Petitioner / Respondent

vs.

CATHIE PETERSON

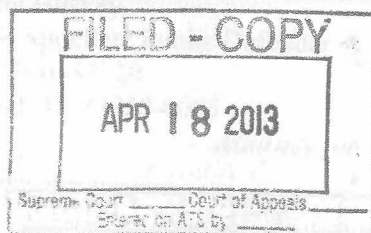
Respondent / Appellant

Appealed from the District Court
of the First Judicial District of the State of Idaho,
in and for Boundary County

Hon. Jeff M. Brudie

BRENT FEATHERSTON
Attorney for Petitioner / Respondent

W. COREY CARTWRIGHT
Attorney for Respondent / Appellant



SEE AUGMENTATION RECORD

410615

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF)	SUPREME COURT NO. 40615-2013
)	
MELVIN PETERSON	)	DISTRICT COURT NO. CV-2007-266
)	
DECEASED)	
-----)	
)	
IDAHO DEPARTMENT OF HEALTH)	
& WELFARE,)	
)	
Petitioner - Respondent,)	
)	
v.)	
)	
CATHIE PETERSON,)	
)	
Respondent - Appellant.)	
-----)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for the
County of Boundary

HON. JEFF M. BRUDIE
District Judge

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ATTORNEY FOR APPELLANT

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FILED

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STATE OF IDAHO
 COUNTY OF BOUNDARY
 GLENDA POSTON, CLERK
 BY [Signature]
 DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY
 MAGISTRATE DIVISION**

In the Matter of the Estate of	)	CASE NO. CV-2007-00266
)	
MELVIN PETERSON,	)	CATHIE PETERSON'S
	)	RESPONSIVE BRIEF
Deceased.)	

COMES NOW BRENT C. FEATHERSTON, FEATHERSTON LAW FIRM, CHTD.,
 attorneys for Cathie Peterson, individually, and hereby submits the following responsive brief:

L STATE OF FACTS

This case arises from the State of Idaho, Department of Health and Welfare's,
 ("Department") claim for Medicaid reimbursement asserted against the Estate of Melvin
 Peterson.

On December 5, 2001, by deed, Mr. Peterson conveyed his home to Cathie Peterson
 retaining a life estate to himself. At the time, Cathie Peterson resided in the home and was
 caregiver for her father. Cathie Peterson expended several thousand dollars in making
 improvements to her very modest home from December, 2001, until the Department asserted a
 claim to the property in this proceeding.

Melvin Peterson began receiving Medicaid benefits several years after deeding the
 home to Ms. Peterson.

CATHIE PETERSON'S RESPONSIVE BRIEF - 1

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Upon Mr. Peterson's death on March 3, 2007, the Court appointed Ms. Cathie Peterson as Personal Representative of the Estate. Ms. Peterson filed an inventory of the Melvin Peterson Estate. Subsequently, upon the Court's Order to do so, Ms. Peterson included in the inventory of the Estate of Melvin Peterson, the "life estate" at a zero value.

The Department objected to the valuation. In response, Cathie Peterson, as Personal Representative of the Estate, filed a Motion to Hire Appraiser to determine the value of the life estate. Surprisingly, the Department objected to the Personal Representative, Cathie Peterson's, Motion to Hire Appraiser stating that the proposed appraiser was not "qualified to provide such opinion evidence because he is not an actuary or a person otherwise possessed with specialized knowledge of life expectancies". The State further alleged in their objection that they would only agree to the appointment of an appraiser to determine fair market value of the fee ownership of the property so as to apply the "life estate table contained in I.D.A.P.A. § 16.03.05.837.02 ... in order to properly determine the actual value of the life estate interest."

The Department's objection further stated that the cost of such appraisal should not be borne by the Estate, but rather by the Personal Representative, individually.

The Department has been intent on using the I.D.A.P.A. Table from the beginning, refusing to permit a qualified opinion of value.

Cathie Peterson has never been joined in this action as an individual or in her individual capacity. She specially appeared through the undersigned counsel reserving jurisdiction and service of process after it became clear that the State of Idaho intended to force the sale of her residence and home based upon I.D.A.P.A. 16.03.05.837 (Rule 837).

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CATHIE PETERSON'S RESPONSIVE BRIEF - 2

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On July 15, 2009, the Department filed a Petition to Compel Sale of Home and to Compel Payment to the Department of its claim.¹ The Court's Order granting the Department's Petition to Compel Sale of Home was overturned on appeal. On remand, the Court removed Ms. Cathie Peterson as Personal Representative of the Estate of Melvin Peterson and appointed the State of Idaho, Department of Health and Welfare, as Successor Personal Representative.

At hearing on September 29, 2011, the State of Idaho as Successor Personal Representative brought before the Court a Petition for Entry of Findings of Fact and Conclusions of Law. The Department presented no evidence as to the value of the real property or life estate in question.

The Department asserts that the Court should make a "finding" as to the percentage of value attributable to Mr. Melvin Peterson's life estate at the time of his death based upon Rule 837 and upon Idaho Code § 56-218(4)(b)(2011).

For the reasons discussed below, neither provisions are applicable and the Court should deny the State of Idaho's Petition for Entry of Findings of Fact and Conclusions of Law in their totality.

II. ARGUMENT

A. Rule 837 is inapplicable.

The State of Idaho argues that I.D.A.P.A. 16.03.05 entitled Rules Governing Eligibility for Aid to the Aged, Blind and Disabled dictates the Court's ruling in valuing Mr. Peterson's

¹ The Petition to Compel the Home at that time owned in fee simple was never served on or brought as an independent action against Cathie Peterson, an individual. Cathie Peterson has participated as an individual in this matter pursuant only to a special appearance reserving jurisdiction, venue, service of process and due process filed September 17, 2010.

life estate at the time of his death. The fundamental issue of whether a life estate has value at the time of death is a matter of common law principles and will be discussed further below.

Rule 837 reads in pertinent part as follows:

RULE 837 - LIFE ESTATE AS ASSET TRANSFER.

.01. **Transfer of a Remainder Interest.** When a life estate in real property is retained by an individual, and a remainder interest in the property is transferred during the look back period for less than the fair market value of the remainder interest transferred, the value of the uncompensated remainder is subject to the asset transfer penalty as described in Sections 831 through 835 of these rules. To compute the value of the life estate remainder, multiply the fair market value of the real property at the time of transfer by the remainder factor for the participant's age at the time of transfer listed in the following table:

I.D.A.P.A. 16.03.05.837
[underline added]

A simple reading of Rule 837 above makes clear that the rule was adopted for application in assessing a value to a life estate in determining a recipient's asset transfer penalty "during the look back period" during their lifetime. By its very definition above, the rule and the remainder table is used and only applied during the lifetime of an applicant for benefits to determine an appropriate asset transfer penalty.²

At no time does the State of Idaho ever explain their desire to apply a Rule 837 under these circumstances. "The value of the life estate is determined by a formula which takes into account the age and life expectancy of the life tenant. The longer the life expectancy of the life

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² Asset transfer penalties are assessed pursuant to Rules 831 through 836 to Medicaid participants in long term care or H.C.B.S. See I.D.A.P.A. 16.03.05.831.

tenant, the greater is the value of the life estate". West v. Tax Commission, 99 Idaho 26, 27, 576 P.2d 1060, 1061 (1978).

The process of determining an asset transfer penalty during the lifetime of the Medicaid participant certainly involves actuarial determinations, however, the valuation of a life estate, at the time of a measuring life's death, no longer logically involves those same actuarial determinations. The decedent has died. There is no further accounting for age or life expectancy.

The Idaho Probate Code requires only that a Personal Representative prepare an inventory of property "owned by the decedent at the time of his death". Idaho Code § 15-3-706. It does not require a determination of assets owned prior to the death of the decedent or up to the date of death, but only those assets at the time of his death.

Only property which the decedent owned at the time of his death is subject to inventory and appraisal under I.C. § 15-3-706. Since the life estate terminated at Melvin Peterson's death, there is no asset to value and use of Rule 837 to set such a value is improper, by the plain terms of the Rule and by simple logic.

B. Idaho Code § 56-218 does not apply in these circumstances.

The State of Idaho argues in their closing brief that I.C. § 56-218(4)(b) defines an estate that is subject to Medicaid recovery. Although not expressly stated, it appears that the Department's position is that this definition of estate assets overrides the common law or Probate Code.

For the reasons set forth below, the plain terms and language of Idaho Code § 56-218 does not require the inclusion of the life estate reserved by Melvin Peterson in 2001.

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For purposes of this section, the term "estate" shall include:

- (a) all real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law; and
- (b) any other real and personal property and other assets in which the individual had any legal title or interest at the time of death, to the extent of such interest, including such assets conveyed to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

I.C. § 56-218(4)(2011)
[emphasis added]

The statute does not state that a decedent's life estate is to be included in his estate for Medicaid recovery. Instead, the statute refers to life estates conveyed to a survivor.

For example, Mr. Peterson could have conveyed his property to his daughter in fee title, for his lifetime. That conveyance is a life estate and may revert or transfer to a remainder at the time of Mr. Peterson's death. At his death, this interest is subject to Medicaid recovery under subsection (b).

In this instance, Mr. Peterson did not convey a life estate interest to Ms. Peterson before his death. If he had, that interest would be subject to estate recovery in the estate. Mr. Peterson conveyed a remainder interest subject to his own reserved life estate. For that reason, the latter portion of the statute quoted above is not applicable. The Court should decline to make any findings of fact or conclusions of law applying Idaho Code § 56-218.

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1. Idaho Code § 56-218 does not require the inclusion of a life estate as an asset for purposes of Medicaid recovery.

Idaho Code § 56-218(4)(a) provides that the term estate shall include all real and personal property and other assets included within the individual's estate as defined for purposes of state probate law". I.C. § 56-218(4)(a)(2011).

The Idaho Probate Code imposes a duty upon the personal representative to inventory and appraise all "property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item its fair market value as of the date of the decedent's death". I.C. § 15-3-706 (2011).

Idaho Code § 15-1-201(16) defines an "estate" as "all property of the decedent, including community property of the surviving spouse, subject to administration, property of trusts, and property of any other person whose affairs are subject to this code as it exists from time to time during administration". Idaho Code § 15-1-201(16)(2011).

"A life estate is an interest in real property, the duration of which is limited by the life of some person." Tobias v. State Tax Commission, 85 Idaho 250, 255, 378 P.2d 628, ____ (1963); quoting Thompson on Real Property, Volume II, § 780.

"It is important to realize, however, that if the deceased owned a life estate during his or her life, the life estate will terminate upon death and will not be part of the estate." 121 Am.Jur. – Proof of Facts 3d, 101 (2011).

Fee simple absolute title by a grantor can be split during the conveyance into a present estate and a future estate. The most common present estate is the life estate. The creation of the life estate usually involves words indicating that the possession is for life or some similar limitation without language giving the life estate owner the right to dispose of the property, the future interest cannot be conveyed by the life estate owner there are two types of future estates associated with the life

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estate. These are the reversion and the remainder A remainder is used when the grantor wants to convey ownership of the future interest to a third party.

Id.

The Court previously ordered the Personal Representative to include the life estate as an asset on the inventory. That was done and the life estate was valued by the former Personal Representative at zero value. As of this date, the Court has heard no testimony or evidence that would indicate that the life estate has any value at the time of Mr. Peterson's death or that it is to be included by either Idaho Probate Code or under common law principles within the estate to be probated.

The Department's claim relies entirely upon the Medicaid Recovery Act found in Idaho Code § 56-218. However, the Department's interpretation of I.C. § 56-218 is not consistent with the actual language of Idaho Code § 56-218. The statute defers to Probate Code for a determination of what interests are to be included.

For the reasons set forth herein, the Court would commit error to assess any value to the life estate, as such a determination would be contrary to law. Indeed, the life estate should not have been included in the estate inventory. It was properly appraised at no value by Ms. Peterson, as former Personal Representative.

C. This Court lacks subject matter jurisdiction to determine the issues before it

"It is the general rule that where title to real property is an issue between an estate and its heirs and a third person, such issue must be tried in an independent action brought for that purpose in a competent tribunal and cannot be tried by the probate court." In re Lundy's Estate, 79 Idaho 185, 193, 312 P.2d 1028, 1032 (1957).

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The State of Idaho seeks a court finding that they have a percentage interest based upon the asset transfer tables set forth in Rule 837. This finding is beyond the subject matter jurisdiction of the probate court. As indicated all along, Ms. Peterson is appearing only through a special appearance reserving jurisdiction, both personal and subject matter, and this Court should decline to make or enter findings of fact and conclusions of law where the State of Idaho has failed to establish subject matter for personal jurisdiction.

III. CONCLUSION

Based upon the evidence in the record, the Court is asked to make the following findings of fact and conclusions of law:

1. Melvin Peterson conveyed fee title ownership to Cathie Peterson in certain real property on December 5, 2001, reserving to himself a life estate.
2. Cathie Peterson, in reliance upon the deed, and as an occupant and possessor of said real property during Melvin Peterson's lifetime, made certain improvements and incurred expenses for the improvement of the real property, as her residence, totaling several thousand dollars.
3. Several years later, Melvin Peterson applied for and received Medicaid benefits through the State of Idaho, Department of Health and Welfare.
4. The State of Idaho, Department of Health and Welfare, apparently determined at the time of Melvin Peterson's application that no asset transfer penalty should be imposed on the basis of Melvin Peterson's retained life estate.
5. Melvin Peterson died March 3, 2007, and was 83 years of age.
6. At the time of Melvin Peterson's death, his life estate terminated by operation of law and at that date of death, Melvin Peterson held no legal interest in the real property.

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7. The State of Idaho, Department of Health and Welfare, filed a claim for Medicaid benefits of \$171,386.94.

8. The State of Idaho was provided an opportunity at trial on September 29, 2011, to introduce evidence of a proper valuation of the life estate of Melvin Peterson at the time of his death and introduced no such evidence.

9. By operation of law, the life estate of Melvin Peterson ceased to exist at the time of his death and, therefore, had no value.

10. The Court finds that the asset transfer penalty provisions applied to life estate and remainder interests under Rule 837 are inapplicable to the circumstances of valuing a life estate at the time of death.

11. The Court further finds that the provisions of Rule 837, et seq. are specifically restricted to determining an appropriate value during the life of a Medicaid beneficiary for purposes of imposing an asset transfer penalty and is, therefore, inapplicable for purposes of determining a life estate value at the time of death.

12. The State of Idaho, having failed to provide any evidence as to the value of the life estate, this Court finds that no such value or interest can be attributed to the State of Idaho in and to that real property conveyed by Warranty Deed from Melvin Peterson to Cathie Peterson on December 5, 2001.

13. The State of Idaho, Department of Health and Welfare, is not entitled to any lien or interest attributable to the life estate at issue in this matter.

14. Further, the Court finds that Cathie Peterson was not properly made a party to this proceeding by service of process or other appropriate due process that would vest this Court with personal jurisdiction over Cathie Peterson and/or the real property at issue.

15. Further, the Magistrate Court, acting as Probate Court in these proceedings, lacks subject matter jurisdiction pursuant to Idaho law.

16. Finally, the Court, acting in equity, finds that Cathie Peterson equitably relied upon the Warranty Deed dated December 5, 2001, and incurred expenses, improving the real property in reliance upon the deed from Melvin Peterson totaling several thousand dollars.

17. The Court further finds that the Department failed to file or perfect any proper lien or other encumbrance which would provide actual or constructive notice to Cathie Peterson of the interests claimed by the State of Idaho, Department of Health and Welfare. As such, the Court finds that it would be inequitable for the Court to impose a lien or assess an interest in the real property to or in favor of the State of Idaho, Department of Health and Welfare.

DATED this 18th day of November, 2011.

FEATHERSTON LAW FIRM, CHTD.

By: 

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Attorney for Cathie Peterson
Individually

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CERTIFICATE OF MAILING

I hereby certify that on the 18th day of November, 2011, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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By Cathie Peterson

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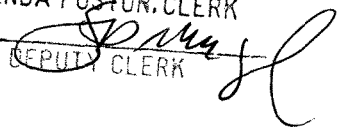
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2011 DEC -5 P 1:56

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY  CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate of	)	Case No. CV-2007-266
)	
MELVIN PETERSON,	)	REPLY BRIEF
)	
Deceased.)	
)	
)	

COMES NOW the State of Idaho, Department of Health and Welfare, a claimant and
successor personal representative herein (hereinafter, the "Department"), and submits the
following reply to "Cathie Peterson's Responsive Brief:"

I.

**THE ISSUE OF WHETHER THE LIFE ESTATE IS AN
ASSET OF THE ESTATE HAS ALREADY BEEN DECIDED.**

A. The Endlessly Repeated Argument That the Life Estate Is Not an Asset of the Estate
Should Be Ignored.

Cathie Peterson argues, yet again, that contrary to the plain language of Idaho Code § 56-218(4)(b), the life estate has no value. This question was decided by the court more than three years ago. The *Order on Petition to Require Payment of Claim* (June 12, 2008) established the life estate as an asset of the estate, and required Cathie Peterson, then personal representative, to include the life estate in the inventory and assign it an appropriate value. Her failure and refusal to assign the life estate an appropriate non-zero value was part of grounds for her removal as personal representative. Tr. (Oct. 7, 2010) p. 33, ll. 11-17. Her removal was upheld on appeal by the District Court, and therefore, this is now the law of this case. *Taylor v. Maile*, 146 Idaho 705, 709, 201 P.3d 1282, 1286 (2009). At some point Peterson's endless rehashing of this long decided issue must end.

B. Cathie Peterson's New Interpretation of Idaho Code § 56-218(4)(b) Is Absurd.

Peterson, for the first time, advances a new and novel reading of the expanded definition of estate found in Idaho Code § 56-218(4)(b). She contends that it would only apply if Melvin Peterson had given a life estate to Cathie Peterson, rather than retained a life estate for himself. This is absurd because the reversionary interest would already be an asset of the estate under section (4)(a), and the expanded definition of estate in section (4)(b), which includes life estates, would be totally unnecessary. This construction is also contrary to every case that has construed the expanded definition of estate, including *State Dept. of Human Services v. Willingham*, 206

Or.App. 156, 136 P.3d 66 (2006), *Bonta v. Burke*, 98 Cal.App.4th 788, 120 Cal.Rptr.2d 72 (2002), and *In re Estate of Laughead*, 696 N.W.2d 312 (Iowa 2005), as well as Judge Gaskill's decision in the case of *In re Estate of Grothe*, Nez Perce County No. CV 02-02163. Peterson has cited no authority that would support her construction of the statute and there is none.

II.

THERE IS NO REASON RULE 837 SHOULD NOT APPLY TO THIS CASE.

Peterson argues that the life estate tables in Rule 837 should not be used because the tables should be applied only during the lifetime of the Medicaid recipient. That argument is not based on any specific language in the rule and does not make sense. The life estate must be valued immediately before death. As explained in *In re Estate of Laughead*, *supra*:

Whether Ruby, "at the time of her death," had an interest in the real property at issue here is determined as of a point in time immediately before her death. *See In re Barkema Trust*, 690 N.W.2d 50, 56 (Iowa 2004) (holding "the phrase 'at the time of death' means the time immediately before the Medicaid recipient's death"). Immediately prior to her death, Ruby held a life estate in 338 acres of land. For reasons that follow, we hold her life estate constituted an interest in real property within the meaning of section 249A.5(2)(c).

In re Estate of Laughead, 696 N.W.2d at 316. Had Melvin Peterson signed a quit-claim deed immediately before his death, ceding his life estate interest to Cathie Peterson, the tables found in Rule 837 would obviously be applied. It makes no sense to say that some other measure should be used a few moments later after Melvin Peterson had expired.

Peterson, for her part, offered no other basis for valuing the life estate, other than to again argue that there should be no value at all, in essence inviting the court to ignore section (4)(b) entirely. This is not a reasonable alternative. In her statement of facts, Peterson implies that the

appraiser hired to determine the value of the property would have found the life estate to be worth nothing. However, this argument was previously rejected by the court and is disingenuous. The fact that there may be no market for a minority interest in property does not mean that the minority interest has no value. That is why the partition statutes exist. *See* Chapter 5, Title 6, Idaho Code. Having failed to offer any reasonable alternative valuation of the life estate, Peterson should not be permitted to simply object to the reasonable and obvious application of the life estate tables in Rule 837.

III.

THERE IS NO JURISDICTIONAL ISSUE

Also, yet again, Cathie Peterson challenges the court's subject matter and personal jurisdiction. The arguments in this regard have taken on the character of the arguments related to how many angels can dance on the head of a pin. The reality is there is no jurisdictional issue here.

Idaho Code § 1-2208(2) assigns probate and estate administration cases to the magistrates. This is so irrespective of the value of the estate or its assets. *Keeven vs. Estate of Keevan*, 126 Idaho 290, 882 P.2d 457 (App. 1994). Idaho Code § 15-3-104 gives exclusive jurisdiction to this court to determine claims against the decedent and his successors:

No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this chapter.

* * *

Idaho Code § 15-3-104 (underline added). Cathie Peterson is, very clearly, a successor to Melvin Peterson, as well as an heir. She is Melvin Peterson's daughter and the ordinary successor to the remainder interest in the life estate.

Cathie Peterson wants it both ways. She wants to be treated as a party while she is personal representative and has control of the assets of the estate, but she wants to be treated as a third party when she doesn't like the outcome. She cites the case of *In re Lundy's Estate*, 79 Idaho 185, 312 P.2d 1028 (1957) for the proposition that a separate action is necessary to determine the property rights of a third party. While this may be so, she is not a third party. She sought appointment as personal representative of the estate as "the daughter" and one of two "sole surviving issue and heirs at law of the decedent." *Application for Informal Probate and Appointment of a Personal Representative* (July 26, 2007). When Cathie Peterson was removed as personal representative, the court retained jurisdiction over her. *Order Removing Personal Representative* (October 7, 2010). This order was the subject of an appeal to the District Court and was upheld on appeal. Cathie Peterson was given notice of the hearing in which she participated. Idaho Code § 15-3-106 states:

Subject to general rules concerning the proper location of civil litigation and jurisdiction of persons, the court may herein determine any other controversy concerning a succession or to which an estate, through a personal representative, may be a party. Persons notified are bound though less than all interested persons may have been given notice.

Idaho Code § 15-3-106 (underline added). Cathie Peterson appeared at the evidentiary hearing, participated, and offered her own evidence. It cannot be more clear that the court has jurisdiction to determine the property rights between the Department and Cathie Peterson relating to the assets of this estate, including the life estate.

Finally, the underlying hearing was held at the insistence of the District Court, and was for the benefit of Cathie Peterson, to permit her to present such evidence and arguments as she thought necessary. The personal representative could simply have assigned the value of the life estate and proceeded to bring a partition action in the District Court. It seems odd that Cathie Peterson would object to the jurisdiction of the court to determine issues presented at a hearing held for her own benefit.

DATED this 30th day of November, 2011,


W. COREY CARTWRIGHT
Deputy Attorney General

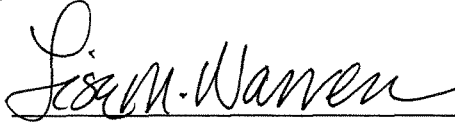
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I hereby certify that a true and correct copy of the foregoing document was mailed, postage pre-paid, to the following:

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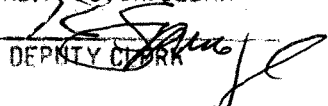
DATED this 30 day of November, 2011.


LISA M. WARREN, Paralegal
Contracts and Administrative Law Division

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2011 DEC 22 PM 3: 54

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY
MAGISTRATE DIVISION

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY  DEPUTY CLERK

In the Matter of the Estate of) CASE NO. CV 2007-266
)
MELVIN PETERSON,) MEMORANDUM OPINION
)
)
Deceased.)

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ATTORNEY FOR CATHIE PETERSON, INDIVIDUALLY BY SPECIAL APPEARANCE

I.

INTRODUCTION

At issue in this case is the State of Idaho, Department of Health and Welfare's ability to enforce its statutory lien for Medicaid expenditures against real property currently owned by the decedent's daughter Cathie Peterson. Following a remand by the district court for additional findings of fact and conclusions of law, and an intervening appeal stemming from this court's

removal of Ms. Peterson as the personal representative, an evidentiary hearing was conducted on September 29, 2011. The parties have submitted their post-trial briefs, and the matter is now deemed ripe for the court's determination.

II.

FACTUAL BACKGROUND

Melvin Peterson was born on [REDACTED] and died on March 3, 2007 at the age of 83. Cathie Peterson is Melvin's adult daughter, and was the personal representative in this probate proceeding until being removed by the court following hearing on the State's petition for removal on October 7, 2010.

The vast majority of the facts in this case are not in dispute. On December 6, 2001, Melvin gifted ownership of his residential real property to Cathie, reserving to himself a life estate. Cathie did not pay fair market value for the remainder interest she received. The deed at issue is appropriately titled "Gift Deed", and was recorded as instrument #204218 in Boundary County.

According to the State's amended claim, Melvin began receiving Medicaid benefits on or about March of 2003. By the time of his death, Melvin had received a total of \$171,386.94 in Medicaid benefits. At the hearing on the State's petition for allowance of its claim against the estate, the personal representative Cathie Peterson agreed that the State's Medicaid claim was valid and should be allowed by the court. The court entered an order allowing the State's claim on April 14, 2008.

In May of 2008, the State petitioned the court for its order requiring payment of its claim by sale of the real property and residence to which Melvin retained a life estate at the time of his death. As the current titled owner of that real property, Cathie objected on a variety of grounds, which were rejected by the court due to its stated reliance on the reasoning and conclusions set forth by

Judge Gaskill in his “Grothe Estate” decisions in Nez Perce County. A copy of those decisions had been provided to the court and Cathie Peterson’s counsel John Finney by the State’s former counsel Larry Goins. This court clearly recollects discussion with the parties on the record concerning Judge Gaskill’s persuasive reasoning and conclusions in the *Grothe* probate, and its announcement that said reasoning was being adopted by the court in this case.

However, for reasons that remain unclear, none of that discussion appears in the transcripts that were provided to the district court on appeal. Consequently, the district court was unable to ascertain this court’s rationale for its conclusion that a portion of the real property currently owned by Cathie Peterson is subject to the State’s Medicaid reimbursement lien. It is also noteworthy that the State’s current counsel, Mr. Cartwright, has advised that the State is no longer maintaining its former position that this court can require the sale of Cathie Peterson’s real property as an estate asset to satisfy its claim. Instead, the State now concedes that this court can only recognize and quantify the lien, and the State will then need to file an action for partition (i.e. forced sale) in district court to satisfy its Medicaid recovery lien.

In any event, it is undisputed that Cathie Peterson did not pay anything for the life estate remainder interest that her father gifted to her in 2001. Nor is it disputed that Melvin incurred \$171,386.94 in Medicaid benefits, which the state is entitled by law to recover, and that the estate has insufficient funds to pay, absent the inclusion of the value of Cathie’s gifted remainder interest in the real property.

The evidence at hearing also convincingly demonstrated that Cathie expended considerable sums of money both maintaining and improving the residence at issue after receiving the gift deed from her father. There is no testimony or other evidence in the record to show whether and by what amount said expenditures increased the fair market value of the residence and real property.

III.

DISCUSSION

A.

INCLUSION OF THE LIFE ESTATE AS AN ESTATE ASSET

The primary issue in this case is whether the gifted life estate remainder interest can be included as an estate asset for the limited purpose of satisfying the State's unpaid Medicaid lien, pursuant to Idaho Code Section 56-218(4). This is the exact issue and argument(s) presented to Judge Gaskill in the *Grothe Estate*. As the court previously advised the parties in 2008, Judge Gaskill's reasoning, rationale and conclusions on this exact issue are deemed persuasive and correct by this court. A copy of said decisions is attached hereto and incorporated by reference. For the reasons set forth therein, the life estate remainder is deemed to be an estate asset for Medicaid recovery purposes only, and the court has jurisdiction to establish a lien against the property owned by Cathie Peterson.

B.

VALUATION OF THE GIFTED REMAINDER INTEREST

Because the State now concedes that it must enforce its lien in a separate district court proceeding against the real property, this court need not quantify the value of that lien in dollars. It is sufficient to simply note that IDAPA 16.03.05.837.01 (aka rule 837) shall be applied to the undisputed facts to determine the valuation formulae applicable to the gifted life estate remainder interest as a matter of law. Ms. Peterson's arguments against applying the law (IDAPA) to this case are adequately addressed and rejected in Judge Gaskill's *Grothe* decision, and his rulings are equally applicable here.

This lien arose within the context of a probate proceeding. It would therefore seem appropriate to utilize the date of death fair market value of the real property, as that is the inventory valuation date for all estate assets. See I.C. 15-3-706. However, this is a question of law over which the presiding district judge in the anticipated partition action will have free review.

C.

OFFSETS TO VALUE OF REAL PROPERTY

Cathie Peterson alleges that the value of the real estate should be reduced or offset due to her improvements. The State objects to any offset, reduction, or credit, arguing in its brief that she has lived on the property for free since her father's death in March of 2007. The State's position is unpersuasive, as it ignores the fact that Cathie is the owner of the property and has the legal right to live there "rent free". Certainly, the State's grievance would never be aired if the estate had sufficient liquid assets to cover the Medicaid claim.

To the extent that the State implies that this estate proceeding has been unnecessarily prolonged to benefit Ms. Peterson, the State has no one to blame for that circumstance but itself. The State's former counsel in particular only sporadically took action to keep this litigation moving forward. The petition to remove Ms. Peterson as the personal representative wasn't filed until September of 2010; about two years after it had become apparent that Ms. Peterson and her attorney Mr. Finney were pursuing her own individual best interests and not the enumerated responsibilities of a personal representative. See I.C. 15-3-703, et seq. The State, having sat on its rights and contributed to the delay in the administration of this estate for so long, cannot now be heard to argue that Ms. Peterson's claimed improvements to the subject property should be ignored by the court.

Having concluded that equity requires the court to consider the evidence in support of Ms. Peterson's claims of improvement, the court must deny those claims for the following reasons. In its

brief, the State classifies all of Ms. Peterson's improvements to the property as mere "maintenance". While many of her claimed improvements can accurately be so described, others are clearly beyond that which can be considered ordinary maintenance.

For example, the new metal roof, fence, three new fiberglass and steel doors, and \$3,800 for new windows are clearly material improvements and not mere maintenance. (Ex. 1) However, there is no evidence before the court to demonstrate the enhancement in fair market value to the property as a result of said material improvements. The court agrees with the State that where equitable contractual relief is sought, the proper measure of unjust enrichment is the increase in value to the asset improved, and not the amount expended. *Nielson v. Davis*, 96 Idaho 314, 528 P.2d 196 (1974)

In her Responsive Brief, Ms. Peterson argues that she should be given a dollar for dollar credit, but fails to quantify the total dollar amount she seeks. No expert witness testimony was offered at hearing regarding the resulting enhancement in value to the house. Nor did Cathie Peterson, as owner of the property, offer the court her opinion of the property's enhancement in value as a result of her improvements and expenditures. Having failed to supply the court with sufficient evidence to quantify her claim to enhanced value, the court must decline Ms. Peterson's request for a credit or offset.

IV.

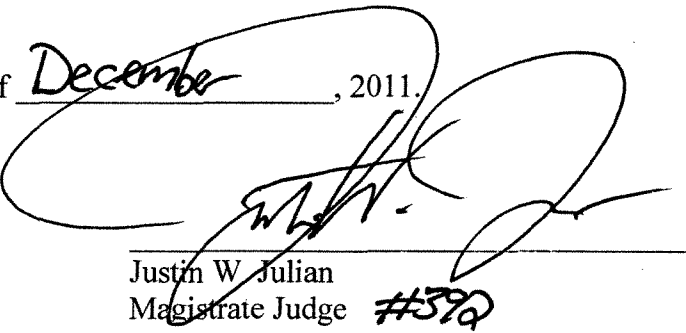
CONCLUSION

The foregoing shall constitute this court's findings of fact and conclusions of law. This court has jurisdiction over Cathie Peterson and the establishment of the State's Medicaid recovery lien against the gifted real estate that she owns. The value of the gifted life estate remainder at the time of Melvin's death is an estate asset for Medicaid recovery purposes, which will be valued pursuant to IDAPA rule 837. Any necessary partition of the real property asset to enforce the state's

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lien will be pursued in a separate action in district court. Cathie Peterson has failed to prove equitable entitlement to a credit or offset of value for improvements to the property at issue. Mr. Cartwright will submit a judgment consistent with the foregoing.

DATED this 22nd day of December, 2011.


Justin W Julian
Magistrate Judge #372

430

I hereby certify that a true and correct copy of the foregoing was mailed, regular mail, postage prepaid, this 22 day of December 2011, to:

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Deputy Clerk

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HUMAN SERVICES DIV.

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PATTY O. WEEKS
CLERK OF THE DIST. COURT

Donna Williams

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCEIN THE MATTER OF THE ESTATE OF)
)
OLIVE J GROTHE and LLOYD GROTH,)
husband and wife,)
)
Deceased.)
_____)

CASE NO. CV02-02163

OPINION AND ORDER ON
PETITION FOR INCLUSION
OF LIFE ESTATE IN
ESTATE INVENTORY

This matter is before the Court on the State of Idaho, Department of Health and Welfare's (hereinafter "Department") Objection to Inventory and Final Account, and Petition to Require Life Estate to be Included in Inventory. The Court heard oral arguments on the matter April 19, 2007. Following arguments, the Court set a status conference in the matter for May 24, 2007. On May 29, 2007, the Court ordered the parties to submit briefing on the inventory issue by June 25, 2007. The Department is represented by attorney W. Corey Cartwright from the State of Idaho Attorney General's office. The Personal Representative of the Estate (hereinafter "Estate") is represented by attorney Eric K. Peterson. The Court, having read the objection and petition, the stipulation of facts and the briefs submitted by the parties, having heard oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

STIPULATED FACTS AND PROCEDURAL BACKGROUND

Lloyd Grothe was born on January 16, 1909. On August 1, 2000, Mr. Grothe was granted medical assistance through the Medicaid program. The program expended not less than \$11,197.21 in medical and nursing home care benefits for Mr. Grothe during his eligibility period. Lloyd Grothe died on December 25, 2000, survived by his wife, Olive J. Grothe, who died on September 22, 2001.

On February 19, 2002 a Medicaid lien was filed with the Secretary of State's office against any asset of the Lloyd and Olive Grothe estate. Pursuant to I.C. § 56-218(1) and (5), the Department has a priority estate claim for Medicaid benefits paid on behalf of Lloyd Grothe. On September 20, 2002, the Department filed a Petition for Appointment of Personal Representative in the matter of the estate of Lloyd and Olive Grothe. The Petition asserted the Department held a valid lien against the estate, that no personal representative had been appointed to probate the estate and that the Department sought to assert its claim for Medicaid lien against estate assets, including real property located at 1024 Hemlock in Lewiston, Idaho.

On September 23, 2007 an Order Appointing Public Administrator was entered by the Court. On November 4, 2002, the Department filed a Claim Against Estate in the amount of \$11,197.24 and a Demand for Notice, serving the same on the administrator. The Department's claim was not disallowed and no Notice to Creditors has been published.

On January 13, 2003, attorney Eric Peterson filed a Resignation of Personal Representative and Appointment of Successor Personal Representative in the above-entitled probate action. The decedents' son, Gary Grothe, was appointed successor personal representative by the Court on January 16, 2003.

On July 13, 2006, the Department filed a Petition to Require Payment of Claim. On January 16, 2007, the Medicaid lien against the estate was renewed for five (5) years by the filing of a renewal with the Secretary of State's office.

On April 2, 2007, the personal representative filed a Petition for Order Approving Charge and Discharge statement, Final Accounting, Final Settlement and Distribution and a Charge and Discharge Statement, Final Accounting and Distribution Statement. The filed documents listed the real property at issue as having no value and included the notation "for disclosure purposes only - no value listed on property as the property is not a probate asset- interest before death was a life estate . . . not subject to probate." A hearing on the Petition for final settlement was scheduled for April 19, 2007. However, prior to the hearing date, the Department filed an Objection to Inventory and Final Account and Petition to Require Life Estate to be Included in Inventory. The objection was raised during the April 19, 2007 hearing, resulting in the Court setting the case for scheduling conference on May 24, 2007. During the scheduling conference, the Court ordered the parties to file briefs by July 25, 2007 on the issue of whether the life estate is subject to probate as an asset of the estate.

The following history is relevant to the issue before the Court. On August 16, 1977, Lloyd and Olive Grothe, along with their son Gary Grothe, were the grantees of real property located at 1024 Hemlock in Lewiston, Idaho. The deed provided each of the Grothes a one-third interest in the property.¹ On February 2, 1998, Lloyd and Olive Grothe conveyed their interest in the real property to Gary and Maria Grothe² by a deed of gift, but reserved a life estate in the property.³ On August 11, 2000, Gary Grothe, acting as attorney in fact for Lloyd Grothe,

¹ Exhibit "A" to the Stipulation of Facts filed April 19, 2007

² Gary Grothe is the son of Lloyd and Olive Grothe. Maria Grothe is the wife of Gary Grothe.

³ Exhibit "B" to the Stipulation of Facts filed April 19, 2007.

conveyed Lloyd's life estate interest in the real property to Olive Grothe. Lloyd Grothe died December 25, 2000 and Olive Grothe died September 22, 2001.

ANALYSIS

The parties agree that the Department has a valid claim for recovery of Medicaid benefits paid on behalf of Lloyd Grothe and that the Department timely filed a claim in the probate action.⁴ In dispute is whether the life estate interest held by Olive Grothe is an asset that must be listed in the estate inventory. The Department contends the life estate is an asset that must be included in the estate inventory as I.C. § 56-218(4) allows the Department to look to the life estate for recovery of expended Medicaid benefits. The Estate takes the position that the Department must initiate a separate action outside of the probate proceeding to enforce whatever rights the Department may have in regard to the life estate. At issue are Idaho's probate code and Idaho's public assistance code, in particular I.C. § 15-1-201(15)⁵ and I.C. § 56-218(4). The issue, which appears to be one of first impression in Idaho, requires the Court to determine whether the statutory schemes are in conflict or can be reconciled.

The Estate begins its argument by propounding the common law principal that when the interest held in real property is a life estate, upon the death of the holder of the life estate, title and control passes immediately to the remainderman. Based on that premise, the Estate contends Olive Grothe's life estate extinguished the moment Olive Grothe died and, therefore, there is no property asset subject to probate and/or inclusion in the probate inventory. The common law

⁴ The personal representative states in his brief filed June 25, 2007, pages 3-4: "The State, by virtue of the application of Idaho Code section 56-218, is a secured creditor of the probate estate. A timely creditor's claim was presented by the State and not denied. The State, again pursuant to the provisions of Idaho code section 56-218, holds a secured interest in the extinguished real property interest as against the current owner of the property."

⁵ The definition of 'estate' is currently found at I.C. § 15-1-201(16) but was located at I.C. § 15-1-201(15) in 2002.

principal espoused by the Estate is correct. Nevertheless, the legislature has the power to modify the common law. *Kirkland v. Blaine County Medical Center*, 134 Idaho 464, 4 P.3d 1115 (2000).⁶ "While we recognize that Idaho's informal probate laws encourage prompt and efficient settlement of estates, they do not evince a public policy of encouraging distribution before estate liabilities have been ascertained and paid." *Hintze v. Black*, 125 Idaho 655, 659, 873 P. 909 (Ct.App.1994) [emphasis added].

The Estate, while impliedly conceding the life estate may have value in the context of I.C. § 56-218, contends the life estate interest held by Olive Grothe falls outside the probate code definition of estate, making it a non-probate asset not subject to inclusion in the probate inventory. Idaho's probate code defines 'estate' as follows:

"Estate" means all property of the decedent, including community property of the surviving spouse subject to administration, property of trusts, and property of any other person whose affairs are subject to this code as it exists from time to time during administration.

I.C. § 15-1-201(15).

The Estate concedes Idaho's public assistance law specifically includes a life estate as an estate asset for purposes of recovery of Medicaid benefits, but contends the Department must bring an action outside of the probate proceedings to assert its rights. The relevant public assistance law reads as follows:

For purposes of this section, the term "estate" shall include:

- (a) All real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law; and
- (b) Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the

⁶ "Because it is properly within the power of the legislature to establish statutes of limitations, statutes of repose, create new causes of action, and otherwise modify the common law without violating separation of powers principles, it necessarily follows that the legislature also has the power to limit remedies available to plaintiffs without violating the separation of powers doctrine." *Kirkland v. Blaine County Medical Center*, 134 Idaho at 471

deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

I.C. § 56-218(4).

The question raised in the instant matter requires the Court to engage in statutory interpretation and construction in order to determine whether I.C. § 15-1-201(15) and I.C. § 56-218(4) are in conflict, can be reconciled, or if one statute controls over the other.

Interpretation of a statute begins with an examination of the statute's literal words. *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct.App.2000). If a court must engage in statutory construction, then its duty is to ascertain and give effect to the intent of the legislature. *Beard*, 135 Idaho at 646, 22 P.3d at 121. In so doing, we look to the context of the statutory language in question and the public policy behind the statute. *State v. Cudd*, 137 Idaho 625, 627, 51 P.3d 439, 441 (Ct.App.2002). When an ambiguous statute is part of a larger statutory scheme, we not only focus upon the language of the ambiguous statute, but also look at other statutes relating to the same subject matter and consider them together in order to discern legislative intent. *State v. Paciorek*, 137 Idaho 629, 632, 51 P.3d 443, 446 (Ct.App.2002).

State v. Shanks, 139 Idaho 152, 154, 75 P.3d 206 (Ct.App.2003).

The Court has traditionally used a two-step approach to legislative interpretation. "We interpret statutes according to the plain, express meaning of a provision in question, and we will resort to judicial construction only if the provision is ambiguous, incomplete, absurd, or arguably in conflict with other laws." *Peasley Transfer & Storage Co. v. Smith*, 132 Idaho 732, 742, 979 P.2d 605, 615 (1999).

Sandpoint Independent Highway District v. Board of County Commissioners, 138 Idaho 887, 890, 71 P.3d 1034 (2003).

The language in I.C. § 56-218(4) is plain and unambiguous. For purposes of Medicaid benefits recovery, the definition of 'estate' has been expanded by the Idaho legislature to include a life estate interest in real property⁷. Yet, the expanded language has not been added to the definition of estate in the probate code. Nevertheless, Idaho Code § 15-1-201(15) includes

⁷ Added pursuant to 42 U.S.C.A. § 1396p(b)(4)(B)

'catch-all' language that reads, "... and property of any other person whose affairs are subject to this code as it exists from time to time during administration."

In comparing the two statutes, it is evident they relate to the same subject - the composition of the 'estate' of a deceased individual - making the statutes *in pari materia*.

Statutes are *in pari materia* if they relate to the same subject. *Grand Canyon Dories v. Idaho State Tax Comm'n*, 124 Idaho 1, 855 P.2d 462 (1993). Such statutes are construed together to effect legislative intent. *Id.* Where two statutes appear to apply to the same case or subject matter, the specific statute will control over the more general statute. *State v. Barnes*, 133 Idaho 378, 987 P.2d 290 (1999).

Gooding County v. Wybenga, 137 Idaho 201, 204, 46 P.3d 18 (2002)

The probate code specifically states, "This code shall be liberally construed and applied to promote its underlying purposes and policies." I.C. § 15-1-102(a). The Code then provides:

The underlying purposes and policies of this code are:

- (1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;
- (2) to discover and make effective the intent of a decedent in distribution of his property;
- (3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;
- (4) to facilitate use and enforcement of certain trusts;
- (5) to make uniform the law among the various jurisdictions.

I.C. § 15-1-102(b); See also *In re Estate of Elliott*, 141 Idaho 177, 181, 108 P.3d 324 (2005).

When I.C. § 15-1-201(15) and I.C. § 56-218(4) are considered together, along with the underlying purposes and policies of the probate code, and the code is liberally construed and applied to promote those purposes and policies, the intent of the legislature becomes clear. By expanding the definition of 'estate' in I.C. § 56-218, it is clear the legislature intended issues regarding recovery of public assistance medical benefits to be addressed in the probate process.⁸

⁸ While the issue before the Court in *In re Estate of Jackman*, 132 Idaho 213, 970 P.2d 6 (1998) was distinguishable from the issue before this Court, the Supreme Court in *Jackman* had no difficulty reconciling 42 U.S.C. § 1396p, now codified at I.C. § 56-218, with Idaho's probate code, and in particular with I.C. § 15-1-201(15).

However, because the expanded definition is applicable only for the limited issue of public assistance recovery, it would have been error to add the same language to the probate code. To do so would have created a general expansion that would have allowed all creditors to look to the expanded assets for recovery. Such was clearly not the intent of the legislature nor was it necessary.

By expanding the assets that can be reached for the limited purpose of recovery of Medicaid benefits, the legislature created a specific statute that controls over the more general probate statute. Such a scheme is consistent with, and falls within the language of, I.C. § 15-1-201(15), as it allows into the probate proceedings "property of any other person whose affairs are subject to this code as it exists from time to time during administration." Questions relative to a life estate and the property interest of a remainderman fall squarely within this language. Those questions, such as determining the value of a particular life estate the moment before death occurred, do not change whether asked within the confines of a probate proceeding or in a separate action and the questions are as amenable to being answered in a probate proceeding as they would be in a separate proceeding.⁹

The purpose of probate proceedings is to provide an effective and efficient process in which to resolve all creditors' claims and asset distribution issues as they relate to a deceased individual. This purpose can only be effectuated when the probate code is liberally construed and applied so that the underlying purposes and policies are attained. That includes addressing those assets the legislature declared to be estate assets for the limited purpose of a claim for

⁹ The Estate in the instant case directs the Court to the language found in I.C. § 56-218(5) that reads, "Any distribution or transfer of the estate prior to satisfying such claim is voidable and may be set aside by an action in the district court." The Estate asserts this language supports its position that the Department must bring a separate action to recover against the life estate interest of Olive Grothe. The Court is not persuaded. When the language is read in context with the entire code section, it is evident the language is directed at the procedural means for challenging the distribution of an asset by the person appointed within the probate proceeding to administer the estate. The language is not directed at a challenge to the proper composition of the estate.

recovery of Medicaid benefits. Contrary to the arguments of the Estate, I.C. § 15-3-709 declares it the duty and responsibility of the personal representative to take control and/or possession of all potential assets of the estate, whether or not title is disputed, so that proper administration of the estate may be accomplished, which includes addressing all claims against the estate along with the distribution of assets

ORDER

It is hereby the Order of the Court that, pursuant to Idaho Code § 15-1-201(15) and Idaho Code § 56-218(4), the life estate held by Olive Grothe prior to her death must be included in the estate inventory and a value determined and attributed to the life estate real property interest for the limited purpose of satisfying, in part or in whole, the State of Idaho, Department of Health and Welfare's valid and timely filed claim for recovery of Medicaid benefits received by Lloyd Grothe.

Dated this 9th day of August 2007.


JAY P. GASKILL, Magistrate Judge

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that true and correct copies of the foregoing Opinion and Order were mailed by regular first class mail, and deposited in the United States Post Office, hand delivered via court basket or hand delivered via Valley Messenger Service to:

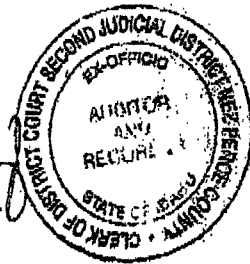
Corey Cartwright
Deputy Attorney General
Human Services Division
P.O. Box 83720
Boise, ID 83720-0036

Eric K. Peterson
CLEMENTS, BROWN AND MCNICHOLS
P.O. Box 1510
Lewiston, ID 83501
United States of America

on this 10th day of August, 2007.

PATTY O. WEEKS
CLERK OF THE COURT

Donna Cunniff
Deputy Clerk



CERTIFICATE OF MAILING

Donna L. Williams

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

IN THE MATTER OF THE ESTATE OF)	CASE NO. CV02-02163
)	
OLIVE J. GROTHE and LLOYD GROTH,	)	OPINION AND ORDER ON
husband and wife,	)	AMENDED PETITION FOR
	)	APPROVAL OF CHARGE AND
Deceased.	)	DISCHARGE STATEMENT, FINAL
	)	ACCOUNTING, FINAL SETTLE-
	)	MENT AND DISTRIBUTION
)	

This matter is before the Court on the Amended Petition for Order Approving Charge and Discharge Statement, Final Accounting, Final Settlement and Distribution filed by the Personal Representative of the Estate and on the Idaho Department of Health and Welfare's Second Objection to Inventory and Final Account and Petition to Establish Value of Life Estate. The Court heard oral arguments on the matters March 20, 2008. The Department of Health and Welfare is represented by attorney W. Corey Cartwright from the State of Idaho Attorney General's office. The Personal Representative of the Estate is represented by attorney Eric K. Peterson. The Court, having read the Petition of the Estate, the Objection and Petition of the Department, the briefs submitted by the parties, having heard oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

FACTUAL AND PROCEDURAL BACKGROUND

On August 8, 1977, Lloyd and Olive Grothe, along with their son Gary, purchased the real property at issue. The deed provided that Lloyd, Olive and Gary each held a one-third interest in the real property. On February 2, 1998, while reserving a Life Estate interest in the real property, Lloyd and Olive Grothe executed a Gift Deed wherein they each conveyed their one-third interest in the real property to their son, Gary Grothe, and his wife Maria.

Lloyd Grothe applied for and was approved to receive Medicaid benefits effective August 1, 2000. On August 10, 2000, Lloyd Grothe was granted Medicaid benefits for nursing home care. On August 11, 2000, Lloyd Grothe deeded his life estate interest in the real property to his wife, Olive. From August 1, 2000 until his death on December 25, 2000, Lloyd Grothe received \$11,197.21 in Medicaid medical and nursing home benefits. Olive Grothe died September 22, 2001. In 2001, the value of the real property at issue was assessed at \$110,830.00. On February 19, 2002, Idaho Department of Health and Welfare ("Department") filed a Medicaid lien against any real or personal property of the Lloyd and Olive Grothe Estate.¹

On September 20, 2002, the Department initiated the above-entitled matter by filing a Petition for Appointment of Personal Representative. An Order Appointing Public Administrator was entered by the Court on September 23, 2002. The Department then filed a Claim Against Estate and Demand for Notice on November 4, 2002. The Department's claim sought payment for Medicaid benefits paid on behalf of Lloyd J. Grothe in the amount of \$11,197.21 pursuant to I.C. §§ 56-218(1) and (5).

¹ The Medicaid line was renewed for an additional five (5) years on January 16, 2007.

On January 14, 2003, a Resignation of Personal Representative and Appointment of Successor Personal Representative was filed. Gary W. Grothe² was subsequently appointed as Personal Representative of the Estate of Grothe ("Estate"). On January 30, 2003, the Estate filed a Petition for Exempt Property Allowance in the amount of \$10,000.00 pursuant to I.C. § 15-2-403. No further action occurred in the case until July 13, 2006, when the Department filed a Petition to Require Payment of Claim. On April 2, 2007, the Estate filed an Inventory, a Charge and Discharge Statement, Final Accounting and Distribution Statement and a Notice of Hearing. The real property of the Estate was omitted from the inventory. When the Estate filed its Final Accounting, the real property asset was valued at zero (Ø), noting that the Estate held only a life estate interest in the real property and further noting there would be no payment on the claim filed by the Department.

On April 4, 2007, the Department filed an Objection to Inventory and Final Account, and Petition to Require Life Estate to be Included in Inventory. On April 19, 2007, the Court heard oral arguments of counsel on the issue of whether the life estate interest must be included in the Estate inventory and whether the Department's lien and claim against the life estate was properly brought in the probate action. Following oral arguments, the Court allowed the parties the opportunity to present briefs on the issue. On August 9, 2007, the Court entered its Opinion and Order on Petition for Inclusion of Life Estate in Estate Inventory, wherein the Court held that the life estate interest in the real property was an asset that must be valued and included in the probate inventory for the limited purpose of Medicaid recovery.

² Gary Grothe was the only child of Olive and Lloyd Grothe and was named as the personal represented in the Last Will and Testament of Olive Grothe, which was filed with the Court after the above-entitled action was initiated by the Idaho Department of Health and Welfare. Olive Grothe had two other children from a prior marriage, both of which were named in Olive Grothe's Last Will and Testament.

On February 29, 2008, the Estate filed an Amended Inventory, an Amended Charge and Discharge Statement, Final Accounting and Distribution Statement, Amended Petition for Order Approving Charge and Discharge Statement, Final Accounting, Final Settlement and Distribution and requested the Court set the matter for hearing. The amended documents listed the life estate interest in the Estate inventory, as previously ordered by the Court, but valued the asset at zero (Ø). On March 6, 2008, the Department filed a Second Objection to Inventory and Final Account and Petition to Establish Value of Life Estate, Memorandum in Support of Second Objection and Petition, and a Notice of Hearing. The Court took the matter under advisement after hearing oral arguments of counsel on March 20, 2008.

Before the Court was able to enter its written ruling, additional filings were submitted by the parties. On March 26, 2008, the Estate filed a Brief re Supplement to Amended Charge and Discharge Statement, Final Accounting and Distribution Statement. The Estate's supplemental brief indicated the personal representative's intent to abandon the life estate asset pursuant to I.C. § 15-3-902 and asserted the asset was, therefore, no longer subject to the probate proceedings. On March 31, 2008, the Department filed a Motion to Strike, asserting the Estate's 'new' position was untimely under I.C. § 15-1-401 and I.R.C.P. 7(b)(3) and sought to insert new issues into a matter already pending before the Court. On March 31, 2008, the Estate filed a Response to Motion to Strike, asserting I.C. § 15-3-715(11) did not require the personal representative to seek court approval to abandon the asset and that the action was not one that required a hearing. On April 2, 2008, the Estate filed a request for Judicial Notice of an unrelated Medicaid recovery case, designated as Nez Perce County Case No. CV2007-01416.

ANALYSIS

The Court finds it necessary to deal first with the post hearing filings of the parties. After the hearing, but before the Court could enter its written ruling regarding the issue of value to be attached to the life estate, the Personal Representative notified the Department that the life estate asset was being abandoned pursuant to I.C. § 15-3-715(11), thus taking the life estate out of the probate proceedings. The Estate contends it has the authority to abandon the asset and need not seek approval from the Court before doing so.

Idaho Code § 15-3-715(11) reads:

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 15-3-902 of this code, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

...

(11) Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

In the instant matter, the Personal Representative is without authority to abandon the life estate asset. On August 9, 2007, the Court ordered that the life estate asset be included in the Estate inventory and ordered that it be valued for purposes of the Department's claim for Medicaid recovery. Once the Court issued its Order, the authority of the Personal Representative to abandon the asset was lost. The statute states in clear and unambiguous terms, "Except as restricted or otherwise provide by the will or by an order in a formal proceeding" I.C. § 15-3-715. (emphasis added).

As a further note, the Court is at a loss to understand the purpose behind the Estate's Judicial Notice filing. The Court recognizes the Department's right to foreclose on its lien by means of a separate action when no probate has been filed, as occurred in the case cited by the

Estate in its judicial notice filing.³ However, the instant case is distinguishable. Here, a probate proceeding was filed. A probate proceeding is a proper avenue for the filing of a Medicaid recovery claim, eliminating the need for a separate recovery claim action.⁴ Therefore, the Court finds the case cited in the Estate's Judicial Notice to be inapplicable to the instant matter.

The primary matter before the Court is what, if any, value should be attributed to the life estate asset of the Estate. The Estate, despite the Court's earlier analysis, continues to argue common law rules regarding life estates. As discussed by the Court in its earlier decision, Congress and state legislatures have the power to modify the common law. That is precisely what Congress and many States, including Idaho, did when they enacted Medicaid recovery statutes and, in particular, amended those statutes to expand the definition of "estate" to include various real property interests that may be subject to Medicaid recovery.

The Medicaid program was created in 1965 when Congress passed amendments to the Social Security Act authorizing states to set up comprehensive plans for supplying medical services to indigents and provided for states to receive matching federal funds for the programs. *West Virginia ex rel. McGraw v. D.H.H.S.*, 132 F.Supp.2d 437 (S.D.W.Va 2001). To qualify for Medicaid benefits, applicants must show they are aged, blind, disabled or the parent of a minor child and that their income and resources are insufficient to meet the costs of necessary care and services. *Id.* The eligibility determination allows applicants to exclude the value of their home for purposes of eligibility only. The home value exclusion thus allows persons with a potentially valuable asset to receive benefits along with those who have greater financial need. *Id.* at 440. Congress addressed this anomaly through estate recovery." *Id.* at 440

³ The Estate asks the Court to take judicial notice of Nez Perce County Case No. CV07-01416. The proceedings in that case are clearly distinguishable as no probate was ever filed following the death of the estate holder and the case was dismissed after the Department recovered its Medicaid claim from the estate.

⁴ The propriety of Medicaid recovery within the probate proceeding was addressed in the Court's earlier decision and, therefore, will not be addressed here.

In 1993, "Congress passed the estate recovery provision as part of the Omnibus Budget Reconciliation Act of 1993 to counterbalance rocketing Medicaid expenditures and overall budget and deficit reductions." *Id.* at 440. Under the 1993 provision, Congress requires states to recoup benefits from the estates of certain Medicaid recipients as a condition to receiving Medicaid funds, while still allowing states to provide for recipients to retain their home during their lifetime,. *Id.* at 440. Persons subject to estate recovery are given notice of the recovery requirement and, therefore, accept or reject Medicaid long-term benefits with full knowledge that their home may one day be subject to a recovery claim. *Id.* States that fail to participate in estate recovery risk losing all or part of their Medicaid funding. *Id.*

As articulated by the Supreme Court of Nevada, estate recovery acts encompass two important policy considerations.

First, the government has a legitimate statutory interest in recovering the amount of correctly paid Medicaid benefits from a deceased Medicaid recipient's estate, which includes the recipient's ownership interest in property at the time of death. This interest arises from federal legislation mandating that states establish an estate recovery program in order to receive federal Medicaid funding. Estate recovery provisions were initiated in light of increased demands for Medicaid, which stemmed from the growth of the nation's aging population. Congress was concerned with projections indicating that Medicaid funding will be insufficient to meet claims within the next thirty years. The federal statutes not only condition the states' receipt of Medicaid funding on efforts seeking recovery from a deceased recipient's probate estate, but they also permit states to expand the definition of "estate" to include property held in joint tenancy and various other ownership interests at the time of death.

However, the federal and state statutes also reflect concern for the second policy consideration, avoiding spousal impoverishment. Congress has long been concerned with preventing spousal impoverishment. The legislation attempts to strike a balance between these policies by limiting reimbursement efforts to situations where impoverishment is no longer an issue. The foremost consideration is enabling states to help more people in need of Medicaid get assistance.

State of Nevada Department of Human Resources v. Ulmer, 87 P.3d 1045, 120 Nev. 108 (Nev.2004).

The Medicaid program is structured so that an individual does not have to fall into poverty before help is available. If eligible, an individual may 'postpone' his or her financial obligation to pay for medical care until the recipient's assets are no longer needed by the recipient or the recipient's spouse. Medicaid is intended to act as a safety net, not a free ride. Medicaid is not an avenue by which one can shift his or her financial burden for medical care to the American taxpayer, while a recipient's heirs enjoy a financial windfall. In the instant matter, the Court finds the Estate's efforts to avoid paying the Department's Medicaid recovery claim untenable. Medicaid benefits were not forced upon the Grothes. Rather, they made an election to receive Medicaid benefits and it is the receipt of those benefits that gives rise to the repayment obligation.

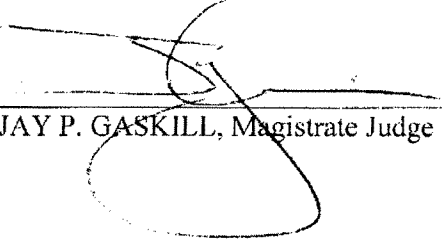
In providing for the expanded definition of "estate", Congress sought to close the loophole crafted by Medicaid recipients seeking to divest the program of much needed tax dollars while still preserving assets for the benefit of the recipient's heirs. Contrary to the continued arguments of the Estate, common law rules of law are not applicable to the issue before the Court as the common law has been modified by federal and state lawmakers. By adding the real property interest known as a life estate to the Medicaid recovery statutes, lawmakers intended a value to be attributed to the asset and for the value be subject to Medicaid recovery claims. To interpret the statute any other way would defy logic and render the statute meaningless. Therefore, the Court finds the life estate must be attributed a value of \$39,796.83, as calculated by the Department based on IDAPA 16.03.05.837. The life estate interest and its corresponding value must be included in the Estate inventory and must be recognized as an asset available for payment of the Department's Medicaid recovery claim.

ORDER

The Petition for Order Approving Charge and Discharge Statement, Final Accounting, Final settlement and Distribution filed by the Personal Representative of the Estate is hereby DENIED.

It is the further Order of the Court that the Life Estate Interest may not be abandoned by the Personal Representative of the Estate and that Petitioner must attribute a value of \$39,796.83 to the Life Estate for purposes of payment of the Department's Medicaid Recovery claim.

Dated this 22nd day of April 2008.



JAY P. GASKILL, Magistrate Judge

CERTIFICATE OF DELIVERY

I DO HEREBY CERTIFY that true and correct copies of the foregoing Opinion and Order on Amended Petition were mailed by regular first class mail, and deposited in the United States Post Office, hand delivered via court basket or hand delivered via Valley Messenger Service to:

Corey Cartwright
Deputy Attorney General
Human Services Division
P.O. Box 83720
Boise, ID 83720-0036

Eric K. Peterson
CLEMENTS, BROWN AND MCNICHOLS
P.O. Box 1510
Lewiston, ID 83501
United States of America

on this 24th day of April, 2008.

PATTY O. WEEKS
CLERK OF THE COURT



Donna Williams
Deputy Clerk

CERTIFICATE OF DELIVERY

2012 JAN 10 AM 9:17

STATE OF IDAHO
COUNTY OF BOUNDARY
CLERK
OF BOUNDARY
DEPUTY CLERK

CLERK
I
RM

[Handwritten signature]

Case No. CV-2007-266

ORDER RE: VALUE OF ESTATE
INTEREST

Deceased.

NOW THEREFORE IT IS HEREBY ORDERED as follows:

2. The value of the estate's interest in the real property gift deeded to Cathie Peterson, as recited in instrument #204218 in Boundary County, shall be that proportion of the fair market value of the entire fee interest in the real property, to wit:

452

Tax #5, being part of Lot Five (5), Block Two (2), Moyie Springs Townsite and described as follows:

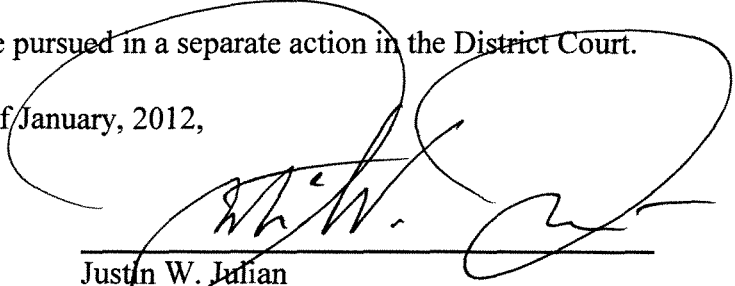
Commencing at the Northeast Corner of Lot Five (5), Block Two (2), Moyie Springs Townsite; thence West along the North Line of Lot Five (5), a distance of 40 feet to a point; thence Southwesterly along Moyie Street a distance of 140 feet to a point; thence South 63 feet to a point; thence East 95 feet at a point on the East line of Lot 5; thence North 125 feet to the POINT OF BEGINNING.

as calculated by the reference tables set forth in IDAPA 16.03.05.837, and the Department shall have a lien upon said property for such value;

3. Cathie Peterson is not entitled to any credit or offset for sums expended to maintain or improve the real property while in her possession;

IT IS HEREBY FURTHER ORDERED that any necessary partition of the real property asset to enforce the state's lien shall be pursued in a separate action in the District Court.

ENTERED this 10th day of January, 2012,


Justin W. Julian
Magistrate Judge

#392

CLERK'S CERTIFICATE OF MAILING

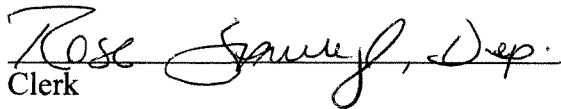
I hereby certify that a true and correct copy of the foregoing document was mailed, postage pre-paid, to the following:

Brent C. Featherston
Featherston Law Firm, Chtd.
Attorneys at Law
113 South Second Avenue
Sandpoint, ID 83864

John A. Finney
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Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, ID 83864

W. Corey Cartwright
Deputy Attorney General
3276 Elder, Ste. B
PO Box 83720
Boise, ID 83720-0009

DATED this 10 day of January, 2012.


Clerk

FEATHERSTON LAW FIRM, CHTD.
BRENT C. FEATHERSTON, ISB No. 4602
Attorney at Law
113 South Second Avenue
Sandpoint, ID 83864
(208) 263-6866
(208) 263-0400 (Fax)

FILED

2012 FEB -6 A 11:51

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY Wilson
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY
MAGISTRATE DIVISION**

In the Matter of the Estate of	)	CASE NO. CV-2007-00266
)	
MELVIN PETERSON,	)	NOTICE OF APPEAL
)	
Deceased.)	
_____)	

**TO: THE RESPONDENT IDAHO DEPARTMENT OF HEALTH AND WELFARE,
AND THE RESPONDENT'S ATTORNEY, W. COREY CARTWRIGHT,
DEPUTY ATTORNEY GENERAL AND THE CLERK OF THE ABOVE-
ENTITLED COURT**

**NOTICE IS HEREBY GIVEN THAT Cathie Peterson, individually, herein
APPELLANT, appeals pursuant to I.R.C.P. 83 and Idaho Code § 17-201, as follows:**

1. The title of the court from which the appeal is taken is the Magistrate Division of the District Court of the First Judicial District of the State of Idaho in and for the County of Boundary, Magistrate Judge Justin W. Julian, presiding.
2. The title of the Court to which the appeal is taken is the District Court of the First Judicial District of the State of Idaho in and for the County of Boundary.
3. The date and heading of the judgment or decision from which the appeal is taken is the Order Re: Value of Estate Interest, entered January 10, 2012.
4. The appeal is taken upon both matters of law and matters of fact.
5. The testimony and proceedings of the original trial or hearing were recorded by

NOTICE OF APPEAL - 1

Featherston Law Firm chtd

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Attorneys at Law

113 S. Second Ave.
Sandpoint, Idaho 83864
(208) 263-6866
Fax (208) 263-0400

* Licensed in
Idaho & Washington

455

the Boundary County Clerk and are in the possession of the Boundary County Clerk. The proceedings resulting in the Order were held on September 29, 2011.

6. The issues on appeal upon which the Appellant intends to assert in the appeal (but such list is not an exhaustive list), and provided that any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal thereafter discovered by the Appellant is as follows:

a. Did the Magistrate err in the findings of fact and conclusions of law contained in its Memorandum Opinion.

b. Did the Magistrate err in its valuation of the Estate's interest in real property owned by Cathie Peterson and described in the Order Re: Value of Estate's Interest and placing a lien upon said property in favor of the State.

c. Did the Magistrate err in determining that it had jurisdiction to issue its Order Re: Value of Estate's Interest.

d. Did the Magistrate err in finding that Cathie Peterson was not entitled to any credit or offset

DATED this 3rd day of February, 2012.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Cathie Peterson
Individually

Featherston Law Firm Chd
Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
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NOTICE OF APPEAL - 2

456

CERTIFICATE OF MAILING

I hereby certify that on the 3 day of February, 2012, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

John A. Finney, Esq.
FINNEY, FINNEY & FINNEY, P.A.
120 East Lake Street, Suite 317
Sandpoint, ID 83864

☐ U.S. Mail, Postage Prepaid
☐ Overnight Mail
☐ Hand delivered
☒ Facsimile No. (208) 263-8211
☐ Other: _____

W. Cory Cartwright, Esq.
DEPUTY ATTORNEY GENERAL
Human Services Division
3276 Elder, Suite B
P.O. Box 83720
Boise, ID 83720-0036

☒ U.S. Mail, Postage Prepaid
☐ Overnight Mail
☐ Hand delivered
☐ Facsimile No. (208) _____
☐ Other: _____

By 

Featherston Law Firm chd

Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
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Idaho & Washington

NOTICE OF APPEAL - 3

457

FILED

2012 MAY 31 A 9:07

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY Wilson
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY**

In the Matter of the Estate of	)	CASE NO. CV-2007-00266
)	
MELVIN PETERSON,)	
)	
Deceased.)	
_____)	

APPELLANT'S BRIEF

APPEALED FROM THE MAGISTRATE DIVISION
FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR BOUNDARY COUNTY

HONORABLE JUSTIN JULIAN
Magistrate

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I. PROCEDURAL HISTORY

This matter began with a Petition for Informal Probate of the estate of Melvin Peterson ("Estate"). Cathie Peterson, the decedent's daughter ("Cathie"), was appointed Personal Representative on July 26, 2007. The State of Idaho, Department of Health and Welfare ("State") filed its creditor claim ("Claim") against the estate on November 30, 2007 for reimbursement of Medicaid funds paid on Melvin Peterson's ("Melvin") behalf during his lifetime. The Claim was disallowed by the Estate with a request for itemization on November 30, 2007. The State filed an "Amended Claim" shortly after which was also disallowed. The State filed its Petition for Allowance of the Amended Claim which was heard and granted by the court on March 25, 2008.

On May 5, 2008, the State filed a Petition to Require payment of the Claim seeking payment of \$171,386.94 of Medicaid benefits paid during Melvin's lifetime. At the hearing on June 12th, the Court ordered the payment of the State's Claim and further finding that the Melvin's life estate reserved a "Gift Deed" to Cathie dated December 6, 2001, be deemed an asset of the estate for purposes of the State recovering its Claim. The Trial Court ordered Cathie to pay the Claim from these assets.

On August 6, 2008, the Personal Representative filed a Motion to Hire Appraiser. The State objected and the Court agreed to the extent that the Estate was permitted to only hire an appraiser to value the fee title of Cathie's home, not the life estate retained by Melvin as of the date of his death. The State also filed a Motion to Compel Sale of Home and Payment to Department, which the Court granted. The Estate appealed these rulings to the District Court. The District Court reversed the Trial Court and remanded on May 25, 2010.

Based upon the State's actions to sell Cathie's home, Cathie, individually, filed a Demand for Notice and Special Appearance on September 17, 2010, reserving issues of jurisdiction, venue, service of process, and due process. Concurrently, Cathie filed a Motion of Automatic Disqualification under IRCP Rule 40 (d)(1). The trial Court denied the motion to disqualify. The State objected and moved to strike Cathie's special appearance, which was denied. The State Petitioned for the removal of Cathie as Personal Representative. The Trial Court granted the petition and appointed the State as Successor Person Representative, citing, in part, Cathie's conflict of interest evidenced by her special appearance through separate counsel. The Estate appealed this ruling to the District Court. The District Court affirmed.

On remand, the State, the Trial Court set the matter for "Court trial" on September 29, 2011. The State, as successor personal representative, did not file any pleadings or notices of what claims, issues or other matters were to be determined or tried. Rather, the State proceeded at the date of trial, to present the testimony of Cathie and then submitted the Personal Representative's Requested Findings of Fact and Conclusions of Law. The Court set a briefing schedule and subsequently issued a Memorandum Opinion on December 22, 2011 directing the State to prepare and present an appropriate judgment. The Trial court entered an Order Re: Value of Estate Interest on January 10, 2012. Cathie filed her Notice of Appeal February 6, 2012.

II. STATEMENT OF FACTS

On March 26, 1997, Melvin, together with a third party, Alicia Whitman, took title to a home and property in Moyie Springs, Idaho. The testimony at trial established the home was in very poor condition with foundation and structural deficiencies. On December 5, 2001, Melvin conveyed all ownership to Cathie by deed with the following language included: **"RESERVING UNTO GRANTOR A LIFE ESTATE IN SAID PROPERTY"**. Ex. A.

Cathie testified that by this time she resided in the home and was caregiver for her father. Cathie expended over \$3,000.00 of her own money in making improvements to her very modest home from December, 2001, until the State asserted a claim to the property in this proceeding. In late 2002, Cathie and Melvin filed suit to clear title from Alicia Whitman.

Melvin applied for and received Medicaid benefits beginning several years after deeding the home to Cathie. The record contains no indication that the State disqualified or penalized Melvin as a result of his life estate.

Upon Melvin's death on March 3, 2007, the Court appointed Cathie as Personal Representative of the Estate. As Personal Representative, Cathie filed an inventory of the Melvin Peterson Estate. Upon the Court's Order to do so, Cathie included in the inventory of the Estate of Melvin Peterson, the "life estate" at a zero value.

The State's position in this litigation is well summarized by its objection to the Estate's motion to hire an appraiser. The State asserts that an appraiser is not "qualified to provide such opinion evidence because he is not an actuary or a person otherwise possessed with specialized knowledge of life expectancies". The State's position at Trial in September (and as early as 2008 when the Estate proposed to hire an appraiser) is that the appropriate valuation of Melvin's life

estate is to determine fair market value of the fee ownership of and then to apply the "life estate table contained in I.D.A.P.A. § 16.03.05.837.02 ... in order to properly determine the actual value of the life estate interest."

The Department has been intent on using the I.D.A.P.A. Table from the beginning, refusing to permit a qualified opinion of value.

Cathie has never been joined in this action as an individual by virtue of any service of process or appropriate notice to her of the State's intent to sell the property that is her home.¹ By virtue of her position as the prior personal representative, she became aware that the State of Idaho intended to force the sale of her residence and home and appeared by special appearance without waiving these jurisdiction and due process issues.

At trial in September, 2011, the State presented no evidence as to the value of the real property or life estate in question and sought a ruling that the Estate is owner of a 38-642% interest in Cathie's home. Closing Brief, p.6.

The Trial Court agreed and entered findings pursuant to I.C. § 56-218 and I.D.A.P.A. Rule 837, accordingly.

¹ The State's Motion to Sell Cathie's home was never served upon Cathie, individually. Cathie has participated since September, 2010, only pursuant to a Special Appearance.

III. ARGUMENT

For purposes of clarity, it may be helpful to be reminded of the legal nature of the interests created by the Gift Deed from Melvin to Cathie.

Fee simple absolute title by a grantor can be split during the conveyance into a present estate and a future estate. The most common present estate is the life estate. The creation of the life estate usually involves words indicating that the possession is for life or some similar limitation without language giving the life estate owner the right to dispose of the property, the future interest cannot be conveyed by the life estate owner there are two types of future estates associated with the life estate. These are the reversion and the remainder A remainder is used when the grantor wants to convey ownership of the future interest to a third party.

121 Am.Jur. – Proof of Facts 3d, 101 (2011).

It appears that Melvin conveyed all future interest in the property, a vested remainder interest, to Cathie subject only to his reserved present interest, a life estate. As indicated above, Melvin lost all right to that future interest conveyed to Cathie, upon execution and delivery of the Gift Deed in 2001. His only reserved present interest was the life estate. The question raised on this appeal is whether the life estate was properly included by the Trial Court in Melvin's estate for purposes of satisfying the State's claim.

A. **Idaho Code § 56-218 does not apply in these circumstances.**

The Trial Court's Memorandum Opinion asserts that "[t]he primary issue in this case is whether the *gifted life estate remainder interest*² can be included as an estate assetpursuant to I.C. § 56-218(4). Memorandum Opinion, p.4.

² The Trial Court does not explain or define this term and it appears to misstate the legal property interests that are at issue in this matter. Melvin reserved to himself a "life estate" but granted the "remainder interest" to Cathie.

The Trial Court ruled that Melvin's life estate is included as an estate asset that is subject to Medicaid recovery, and references the Second District Magistrate Gaskill's decision in The Matter of the Estate of Grothe. It appears that the Department's position is that this definition of estate assets overrides the common law or Probate Code by including life estates as an asset of the decedent at death.

1. **Language of Idaho Code §56-218**

"Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition." Idaho Code Ann. § 73-113 (2012).

The succeeding section provides definitions as follows:

- (d) "Property" includes both real and personal property;
- (e) "Real property" is coextensive with lands, tenements and hereditaments, possessory rights and claims.

Idaho Code Ann. § 73-114 (2012)

The plain language of the statute at issue was misread by the Trial Court to require the inclusion of Melvin's life estate.

For purposes of this section, the term "estate" shall include:

- (a) all real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law; and
- (b) any other real and personal property and other assets in which the individual had any legal title or interest at the time

of death, to the extent of such interest, including such assets conveyed to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

I.C. § 56-218(4)(2011)
[emphasis added]

a. Subsection (b) does not include Melvin's reserved life estate.

The Trial Court appears to rely in error upon subsection (b). The statute does not state that a decedent's life estate is included in his estate. Rather, it seeks to include in the estate, for recovery purposes, assets in which the decedent held a legal interest "at the time of death, to the extent of such interest". The statute goes on to specifically identify as assets of the estate "such assets conveyed [by decedent] to a survivor...through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement." Subsection b makes no mention of including a life estate "retained" by the decedant, only a life estate or other interest that has been conveyed to a "survivor, heir or assign of the deceased individual".

To explain, I.C. §56-218(4)(b) recognizes that Melvin could have conveyed his property to his daughter for his lifetime. That life estate to Cathie would leave a future reversion interest after Melvin's death. The statute insures that that remainder interest must revert back to Melvin's estate at his death. The statute insures that that interest must be included in the estate for Medicaid recovery purposes. Likewise, a conveyance by Melvin to Cathie in joint tenancy, tenancy in common or with right of survivorship, would require that the estate recover that interest to Melvin's estate for Medicaid recovery.

In this instance, Melvin did not convey a life estate interest to Cathie before his death. If he had, that interest would be subject to estate recovery in the estate. Melvin conveyed a remainder

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interest subject only to his reserved life estate.

For that reason, the latter portion of the statute quoted above was misapplied by the Trial Court. The Court should reverse and remand to the trial court with instructions to correct these findings. It can be inferred from the plain language of subsection b, that the legislature intended to identify those assets in which the decedent's interest succeeds or continues after his death, i.e. a remainder or reversionary interest after the life estate conveyance ceases upon his death, an interest that may otherwise be subject to survivorship transfer such as co-tenancy or joint tenancy. But the statute clearly does not specify a life estate held by the decedent at time of death as an asset of the estate for recovery purposes.

Since Idaho Code §56-218(b) does not specifically require inclusion of Melvin's life estate into estate assets, does Idaho probate code require include the life estate under subsection (a)?

b. Idaho Code § 56-218(a) does not include a life estate in the estate.

Idaho Code § 56-218(4)(a) provides that the term estate shall include "all real and personal property and other assets included within the individual's estate as defined for purposes of state probate law". I.C. § 56-218(4)(a)(2012).

The Idaho Probate Code imposes a duty upon the personal representative to inventory and appraise all "property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item its fair market value as of the date of the decedent's death". I.C. § 15-3-706 (2012).

Idaho Code § 15-1-201(16) defines an "estate" as "all property of the decedent, including community property of the surviving spouse, subject to administration, property of trusts, and

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property of any other person whose affairs are subject to this code as it exists from time to time during administration". Idaho Code § 15-1-201(16)(2012).

"A life estate is an interest in real property, the duration of which is limited by the life of some person." Tobias v. State Tax Commission, 85 Idaho 250, 255, 378 P.2d 628, ____ (1963); quoting Thompson on Real Property, Volume II, § 780.

"It is important to realize, however, that if the deceased owned a life estate during his or her life, the life estate will terminate upon death and will not be part of the estate." 121 Am.Jur. – Proof of Facts 3d, 101 (2011).

The Court included the life estate as an asset of the Estate. The Trial record contains no testimony or evidence that would indicate a value of the life estate, or even any authority that the life estate is an asset of Melvin's estate. The Trial Court and the State have taken as an assumption that the life estate is properly an asset of the estate under relying entirely upon an improper reading of Idaho Code § 56-218. However, the Department's interpretation of I.C. § 56-218(4)(b) is not supported by the actual language of the statute.

Relying upon the Second District decision in Grothe, with really no independent analysis, the Trial Court concluded that Melvin's life estate must be included in the estate assets. Grothe Court concluded that the Idaho Legislature, in adopting Idaho Code § 56-218, must have intended to modify the common law so as to include life estates as estate assets for purposes of Medicaid recovery. However, that conclusion is not supported by the plain language of the statute, as discussed above.

From this conclusion, the Trial Court compounds the error by erroneously applying Rule 837 to "value" the life estate.

B. Rule 837 is inapplicable by its own terms.

The State of Idaho argues that I.D.A.P.A. 16.03.05, entitled Rules Governing Eligibility for Aid to the Aged, Blind and Disabled, dictates the Court's ruling in valuing Melvin's life estate at the time of his death.

Rule 837 reads in pertinent part as follows:

RULE 837 - LIFE ESTATE AS ASSET TRANSFER.

01. **Transfer of a Remainder Interest.** When a life estate in real property is retained by an individual, and a remainder interest in the property is transferred during the look back period for less than the fair market value of the remainder interest transferred, the value of the uncompensated remainder is subject to the asset transfer penalty as described in Sections 831 through 835 of these rules. To compute the value of the life estate remainder, multiply the fair market value of the real property at the time of transfer by the remainder factor for the participant's age at the time of transfer listed in the following table:

I.D.A.P.A. 16.03.05.837
[underline added]

A simple reading of Rule 837 makes clear that it was not adopted for the application proposed by the State in this matter. The Rule clearly states its intent to compute a "transfer penalty" where a Medicaid recipient/applicant has improperly transferred a remainder interest and retained to himself a life estate "during the look back period for less than the fair market value of the remainder interest".

By its very language above, the Rule, and the computation table within it, is used during the lifetime of an applicant holding a life estate to determine eligibility, or appropriate penalty, for transfers during the look back period.³ Since one can assume that Medicaid assistance applications

³ Asset transfer penalties are assessed pursuant to Rules 831 through 836 to Medicaid

are not submitted by decedents but live persons requiring medical care, it is obvious error to apply a life estate calculation table that assumes the holder to be alive, to determine the value of a life estate at time of death.

Valuation of a life estate during the holder's life time, is a recognized activity.

"The value of the life estate is determined by a formula which takes into account the age and life expectancy of the life tenant. The longer the life expectancy of the life tenant, the greater is the value of the life estate".

West v. Tax Commission, 99 Idaho 26, 27,
576 P.2d 1060, 1061 (1978).

At no time does the State or the Trial Court provide authority for the application of Rule 837 to a decedent's life estate at the time of death. Again, the Trial Court accepts the Grothe decision wholesale, with no independent analysis.

The process of determining an asset transfer penalty during the lifetime of the Medicaid participant certainly involves actuarial determinations, however, the valuation of a life estate, at the time of a measuring life's death, no longer logically involves those same actuarial determinations. The decedent has died. There is no accounting for future life expectancy.

The Idaho Probate Code requires only that a Personal Representative prepare an inventory of property "owned by the decedent at the time of his death". Idaho Code § 15-3-706. It does not require a determination of assets owned prior to the death of the decedent or up to the date of death, but only those assets at the time of his death. It is undisputed that, at common law, a life estate ceases to exist at the death of the holder and therefore has no value, nor is it an asset of the estate. Tobias v. State Tax Commission, 85 Idaho 250, 255, 378 P.2d 628, ____ (1963); quoting

participants in long term care or H.C.B.S. See I.D.A.P.A. 16.03.05.831.

Thompson on Real Property, Volume II, § 780.

Since the life estate terminated at Melvin Peterson's death, there is no asset to value. The Trial Court's application of Rule 837 to set such a percentage value is improper and should be reversed and remanded with instruction that the life estate has no value.⁴

⁴ The State presented no evidence of value to the life estate other than applying Rule 837.

C. This Court lacks subject matter jurisdiction to determine the issues before it.

"It is the general rule that where title to real property is an issue between an estate and its heirs and a third person, such issue must be tried in an independent action brought for that purpose in a competent tribunal and cannot be tried by the probate court." In re Lundy's Estate, 79 Idaho 185, 193, 312 P.2d 1028, 1032 (1957). "A Probate Court cannot try the question of title as those issues must be brought in District Court." In re Blackington's Estate, 29 Idaho 310, 158 P. 492 (1916).

The State sought and received a Court Order that the Estate has a percentage interest based upon the asset transfer tables set forth in Rule 837. This finding is beyond the subject matter jurisdiction of the probate court. As indicated all along, Cathie is appearing only through a special appearance reserving jurisdiction, both personal and subject matter. The State failed to achieve process upon Cathie or her property in doing so.

D. The Court lacks personal Jurisdiction over Cathie.

Cathie was originally appointed as personal representative of the Estate. At no time has she been personally served with any process as an interested party holding legal title to the real property the State seeks to sell so as to satisfy its claim.

A judgment entered without meeting the jurisdictional requirements of service of process or due process, deprives the court of jurisdiction over the person and is void. McGlooin v. Gwynn, 140 Idaho 727, 100 P.3d 621 (2004)

“The right to procedural due process guaranteed under both the Idaho and United States Constitutions requires that a person involved in the judicial process be given meaningful notice and a meaningful opportunity to be heard.” McGlooin v. Gwynn, 140 Idaho 727, 729, 100 P.3d 621, 623, 2004 WL 2377859 (2004)

Cathie submitted to the Court's jurisdiction as Personal Representative at the time of her appointment in 2007. Idaho Code §15-3-602. The Trial Court continued to have jurisdiction over Cathie after her removal as to her position as “Personal Representative”, but at no time has the State provided meaningful due process to Cathie, individually, as to her interest in the real property that they seek to sell so as to satisfy the State's Claim against the Estate.

Cathie has participated subject only to a Demand for Notice and Special Appearance reserving these issues of jurisdiction. This Court is asked to reverse the Trial Court's Order Re: Value of Estate Interest as it was entered unlawfully and without due process upon Cathie, individually.

E. **The Trial Court disregarded the testimony that Cathie invested significant funds into the Property in reliance upon her Deed from Melvin.**

The testimony at trial was undisputed that Cathie invested over \$3000.00 into improvements into the property in the belief that she owned the property from time of the deed in December, 2001. Trial Exhibit 1 totals \$2,982.51 of expenditures on the property, not including numerous others for which receipts no longer exist. She testified the property was in significant disrepair when she took title and that a quiet title was necessary to clear a third party's ownership from the title. From 2001 until 2007 when Melvin died, the State took no action to give Cathie notice of their intent to take her home from her and the investment she had made into improving that home. Even the State's Notice of Statutory Claim letter dated April 24, 2007 (Ex. 5) acknowledges that at common law a life estate "dies" with the life tenant, but reiterates the State's misreading of Idaho Code §56-218 to include Melvin's life estate in his estate for Medicaid recovery purposes.

Inexplicably, the Trial Court disregarded Cathie's documented investment into the property made in reliance upon her legal title to the property. This Court is asked to reverse the Trial Court and remand with instruction to allow Cathie recovery of her investment into the property.

IV. CONCLUSION

This Court is asked to reverse the Trial Court and remand with instructions to the Trial Court to make findings and conclusions, as follows:

1. Melvin Peterson conveyed fee title remainder ownership to Cathie in certain real property on December 5, 2001, reserving to himself a life estate.
2. Cathie, in reliance upon the deed, and as an occupant and possessor of said real property during Melvin Peterson's lifetime, made certain improvements and incurred expenses for the improvement of the real property, as her residence, totaling several thousand dollars.
3. Several years later, Melvin applied for and received Medicaid benefits through the State of Idaho, Department of Health and Welfare.
4. The State of Idaho, Department of Health and Welfare, apparently determined at the time of Melvin's application that no asset transfer penalty should be imposed on the basis of Melvin's then existing retained life estate.
5. Melvin died March 3, 2007, and was 83 years of age.
6. At common law, Melvin's life estate terminated at the time of his death by operation of law and leaving his estate holding no legal interest in the real property.
7. The State of Idaho, Department of Health and Welfare, filed a claim for Medicaid benefits of \$171,386.94.
8. The State of Idaho was provided an opportunity at trial on September 29, 2011, to introduce evidence of a proper valuation of the life estate of Melvin at the time of his death and introduced no such evidence.

9. By operation of law, the life estate of Melvin ceased to exist at the time of his death and, therefore, had no value.

10. Idaho Code §56-218(b) does not alter, modify or repeal the common law principles of life estates. Idaho probate code and case law does not include a life estate, measured by the life of the decedent, as an interest in the Estate of that decedent.

11. Rule 837 is specifically restricted to determining an appropriate value during the life of a Medicaid beneficiary for purposes of imposing an asset transfer penalty and is, therefore, inapplicable for purposes of determining a life estate value at the time of death.

12. The State, having failed to provide any evidence as to the value of the life estate, no such value or interest can be attributed Melvin's life estate in the real property conveyed by Warranty Deed on December 5, 2001.

13. The State is not entitled to any lien or interest attributable to the life estate at issue in this matter.

14. Further, Cathie was not properly made a party to this proceeding by service of process or other appropriate due process that would vest the Trial Court with personal jurisdiction over Cathie and her real property at issue.

15. Further, the Magistrate Court, acting as Probate Court in these proceedings, lacks subject matter jurisdiction pursuant to Idaho law.

16. Finally, Cathie equitably relied upon the Warranty Deed dated December 5, 2001, and incurred expenses, improving the real property in reliance upon the deed from Melvin Peterson totaling several thousand dollars.

17. The Court further finds that the Department failed to file or perfect any proper lien or other encumbrance which would provide actual or constructive notice to Cathie of the interests claimed by the State of Idaho, Department of Health and Welfare. As such, the Court finds that it would be inequitable for the Court to impose a lien or assess an interest in the real property.

As prevailing party, the Appellant requests award of attorney's fees and costs pursuant to Idaho Code §12-117, 120, 121 and 123, for the reason that the State has acted unreasonably, and without foundation in fact or law.

DATED this 30th day of May, 2012.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Cathie Peterson
Individually

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of May, 2012, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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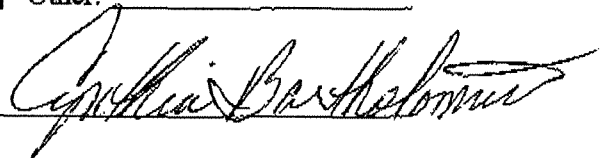
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By



FILED

2012 JUN 21

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY W. Wasden
DEPUTY CLERK

In The Matter of The Estate of:

MELVIN PETERSON,

Deceased.

Case No. CV 2007-0266

RESPONDENT'S BRIEF

Appeal from the Magistrate Division of the District Court of the First Judicial District
of the State of Idaho, in and for the County of Boundary.

HONORABLE JUSTIN W. JULIAN, PRESIDING

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STATEMENT OF THE CASE

Nature of the Case

This is an appeal from an order establishing the value of the primary asset of the estate, the life estate interest held by the decedent before his death. The underlying dispute involves a creditor's claim filed by the State of Idaho, Department of Health and Welfare (the "Department") for Medicaid estate recovery as provided in Idaho Code § 56-218. "Medicaid estate recovery" is a program required by federal Medicaid law that seeks to recover assets of deceased Medicaid recipients, from their estates, in order to reimburse the taxpayers for expenditures made during the Medicaid recipient's life. The Department's claim involves the value of a life estate which the Medicaid recipient had retained upon gifting his real property to his daughter, Cathie Peterson.

Course of Proceedings

Cathie Peterson was appointed personal representative in this matter July 26, 2007.

The personal representative mailed a "Notice to Known Creditor" to the Department on August 6, 2007. She also published a Notice to Creditors with a first publication date of August 16, 2007.

On November 19, 2007, the Department filed a timely Claim Against Estate, in the amount of \$171,134.28, and a Demand for Notice.

Without stating any reason, the personal representative denied the Department's claim, mailing a "Disallowance of Creditor's Claim and Request for Itemization" to the Department on November 28, 2007.

On December 10, 2007, the Department filed an Amended Claim Against Estate in the amount of \$171,386.94.¹ At the same time, the Department filed a Petition for Allowance of Claim.

The following day, the personal representative, again, disallowed the Department's claim without stating any reason. *See* Notice of Disallowance of Claim dated December 11, 2007. In response, a Petition to Require Payment of Claim was filed by the Department on December 19, 2007, and a Petition for Allowance of Amended Claim was filed on December 28, 2007.

About January 2, 2008, the personal representative filed a document called "Objections" in which she objected to the procedure, but still did not state any reason for the disallowance of the claim.

After a hearing on March 25, 2008, the court entered its Order Granting Petition for Allowance of Amended Claim.

On May 5, 2008, the Department filed a Petition to Require Payment of Claim, which together with the Department's Brief in support of Petition to Require Payment of Claim, set forth the Department's demand for payment of the value of the life estate. *See* Idaho Code § 56-218(4)(b).

About May 28, 2008, the personal representative filed "Personal Representative's Inventory." At the same time, the personal representative filed her Objection to Petition to Require Payment of Claim, stating its position relating to the life estate.

¹Since health care providers have up to one year after the service to present claims to Medicaid, it is not uncommon for the initial claim to increase somewhat.

After a hearing, the Court entered its "Order on Petition to Require Payment of Claim" on June 12, 2008. This order established the life estate as an asset of the estate for purposes of Medicaid recovery and ordered the personal representative to amend the Inventory and assign an appropriate value to the life estate.

About August 5, 2008, the personal representative filed her Motion to Hire Appraiser. The Department objected, in part, by its "Objection to Motion to Hire Appraiser" filed August 11, 2008.

After a hearing, the Court entered its "Order Approving Hiring of Appraiser" on September 23, 2008, approving an appraisal determining the fee simple value of the real property.

On May 14, 2009, the Department filed its "Motion to Compel Short Form Appraisal" contending the appraisal approved by the court in September, 2008, had never been performed.

On July 15, 2009, the Department filed its "Petition to Compel Sale of Home and Payment to Department," together with a "Notice of Filing Appraisal Report and Addendum."

After a hearing on July 28, 2009, the court entered its "Order Granting Petition to Compel" on August 11, 2009.

The personal representative appealed from this order, filing a "Notice of Appeal" about August 19, 2009.

A "Decision on Appeal" was issued by the District Court on May 25, 2010, vacating the "Order Granting Petition to Compel" and remanding "so that findings of facts and conclusions of law can be established."

About June 22, 2010, the personal representative filed a "Petition for Authority to Sell," together with a "Petition for Approval of and Partial Payment of Attorney Fees and Costs," seeking to liquidate an escrow account and pay the attorney for the personal representative. On the same day, the personal representative filed an "Amended Personal Representative's Inventory" for the first time listing the life estate in the inventory, but assigning the life estate a value of \$0.

On June 30, 2010, the Department filed its "Petition for Findings of Fact and Conclusions of Law." A status conference was held on July 27, 2010, during which Judge Julian indicated an evidentiary hearing would be held on October 21, 2010 to determine all remaining factual issues.

On July 28, 2010, the Department submitted its "First Requests for Admission" to the personal representative.

After a hearing on August 10, 2010, the Court, on August 17, 2010, entered its "Order for Partial Payment of Attorney Fees and Payment of Costs" approving a partial payment of attorney fees in an amount to be stipulated by the parties. At the same time, the Court deferred the Department's Petition for Findings of Fact and Conclusions of Law to follow the trial scheduled for October 21, 2010.

The parties' "Stipulation Regarding Partial Payment of Attorney Fees" was filed about August 24, 2010, with the parties agreeing to reserve objections to the final settlement of the estate.

About August 27, 2010, the personal representative submitted her Responses to First Requests for Admission and thereafter, on September 7, 2010, the Department filed its "Notice

of Deposition” to take the oral testimony of the personal representative. An “Amended Notice of Deposition” was filed on September 15, 2010.

Two days later, on September 17, 2010, Attorney Brent Featherston filed a “Demand for Notice and Special Appearance” on behalf of “Cathie Peterson, individually.” Said notice also stated: “The undersigned moves to vacate and dismiss all orders entered with regard to her real property pursuant to I.R.C.P. Rule 12(b).” At the same time, attorney Brent Featherston, on behalf of “Cathie Peterson, individually” filed a “Motion for Automatic Disqualification of Judge I.R.C.P. 40(d)(1).”

On September 22, 2010, the personal representative (through attorney John Finney) filed “Personal Representative’s Final Accounting and Petition for Decree of Distribution.” On the same day, the Department filed its “Petition for Removal of Personal Representative for Cause” and its “Motion to Strike.” Also on the same day, attorney Brent Featherston, on behalf of “Cathie Peterson, individually” filed an “Amended Motion for Automatic Disqualification of Judge I.R.C.P. 40(d)(1).”

On September 27, 2010, the Court entered its “Order Denying Amended Motion for Automatic Disqualification - IRCP 40(d)(1).”

Also on September 27, 2010, the Department filed a “Notice to Vacate Deposition.”

On September 28, 2010, the personal representative filed “Objections” to the Department’s petitions.

On October 7, 2010, hearing was held on the Department’s “Petition for Removal of Personal Representative for Cause” and its “Motion to Strike.” On the same day, the court entered its “Order Removing Personal Representative.” Cathie Peterson, through attorney John

Finney filed a Notice of Appeal, appealing the removal of Cathie Peterson as personal representative about October 12, 2010. This court entered its Order, affirming the Magistrate, on May 11, 2011.

Thereafter, the court issued a Notice of Hearing and a court trial was held on September 29, 2011. The parties submitted their closing arguments in writing. The court issued its Memorandum Decision on December 22, 2011, and its "Order re: Value of Estate Interest" on January 10, 2012.

This appeal followed.

Statement of the Facts

The relevant facts are simple. Melvin Peterson ("Melvin") was born [REDACTED] and died at the age of 83 on March 3, 2007. Petition to Require Payment of Claim, ¶ 1. Prior to his death, but after reaching the age of 55, Melvin applied for and received state medical assistance (Medicaid) benefits in the amount of \$171,386.94. Petition to Require Payment of Claim, ¶ 2. Melvin owned real property in Moyie Springs which, on December 6, 2001, he conveyed to his daughter Cathie Peterson, retaining a life estate. Exhibit "A" to Petition to Require Payment of Claim. Melvin possessed this life estate interest at the time of his death.

Cathie Peterson lived on the real property in which Melvin owned a life estate interest during his life, and thereafter, and performed maintenance and provided some modest improvements to the structures on the property, but was unable to testify that her expenditures had any affect on the value of the property. Tr. p. 38, ll. 7-9.

ADDITIONAL ISSUES ON APPEAL

1. Whether Cathie Peterson can now appeal the Magistrate's Order on Petition to Require Payment of Claim (06/12/2008).
2. Whether the Department should be awarded its attorney fees on appeal pursuant to Idaho Code § 12-117.

ARGUMENT

I.

STANDARD OF REVIEW

Idaho Rule of Civil Procedure 83(u)(1) sets forth the standard of review for appeals to the district court from the magistrate's division, as follows:

Upon an appeal from the magistrate's division of the district court, not involving a trial *de novo*, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the appellate rules of the Supreme Court.

Rule 83(u)(1), Idaho Rules of Civil Procedure. The Idaho Supreme Court in *Hawkins v.*

Hawkins, 99 Idaho 785, 589 P.2d 532 (1978), explained the import of Rule 83(u)(1):

We read [I.R.C.P. 83(u)(1)] as saying that a district court, in making an appellate review of a magistrate's decision, should perform that task in the same manner as this Court performs its appellate review of the trial decision of a district court. In reviewing a magistrate's findings, therefore, the district courts should adhere to the well recognized rule that findings based on substantial and competent, though conflicting, evidence will not be set aside on appeal. *Prescott v. Prescott*, 97 Idaho 257, 542 P.2d 1176 (1975); *Isaguirre v. Eschevarria*, 96 Idaho 641, 534 P.2d 471 (1975); I.R.C.P. 52(a).

Hawkins, 99 Idaho at 788-789, 589 P.2d at 535-536. Moreover, in *Marchbanks v. Roll*, 142

Idaho 117, 124 P.3d 993 (2005), the Idaho Supreme Court said:

Upon an appeal from the magistrate's division of the district court, not involving a trial *de novo*, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the appellate rules of the Supreme Court. I.R.C.P. 83(u)(1) (2004).

* * *

Substantial evidence is “ ‘such relevant evidence as a reasonable mind might accept to support a conclusion; it is more than a scintilla, but less than a preponderance.’ ” *Clear Springs Foods, Inc. v. Clear Lakes Trout Co.*, 136 Idaho

761, 764, 40 P.3d 119, 122 (2002) (*quoting Evans v. Hara's, Inc.*, 123 Idaho 473, 478, 849 P.2d 934, 939 (1993)).

Marchbanks, 142 Idaho at 119, 124 P.3d at 995. With regard to the Magistrate's conclusions of law, the Idaho Court of Appeals has said:

Where a district court sits as an appellate court for the purpose of reviewing a magistrate's judgment, the district court is required to determine whether there is substantial evidence to support the magistrate's findings of fact. If those findings are so supported, and if the conclusions of law demonstrate proper application of legal principles to the facts found, then the district court will affirm the magistrate's judgment. The judgment also will be upheld on further appeal. *See Ustick v. Ustick*, 104 Idaho 215, 657 P.2d 1083 (Ct.App.1983).

Hentges v. Hentges, 115 Idaho 192, 194, 765 P.2d 1094, 1096 (App.,1988).

II.

THE DECISION OF THE MAGISTRATE

In Appellant's Brief, Cathie Peterson contends:

The State, as successor personal representative, did not file any pleadings or notices of what claims, issues or other matters were to be determined or tried.

Appellant's Brief, p. 2. The suggestion seems to be that the Department was somehow to blame for her being confused as to what issues were to be presented at trial. She had been, however, until just before the hearing, the personal representative in this matter and had been contesting the Department's claim to the life estate for some four years. In her first appeal to this court, Peterson appealed the Magistrate's Order Granting Petition to Compel (08/11/2009) in which the Magistrate ordered the real property to be sold and the Department to be paid \$53,712, less a proportionate share of the costs of sale. In that matter, Peterson argued that:

The Magistrate erred in purportedly concluding that the decedent had an interest at the time of death and in purportedly determining the extent of such interest, in certain real property based upon a life estate.

Appellant's Brief (11/12/2009) p. 13. This court concluded its Decision on Appeal as follows:

Based on the foregoing, the trial court's August 11, 2009, "Order Granting Petition to Compel Sale of Home. and Payment to Department" is vacated and the matter is remanded so that findings of facts and conclusions of law can be established.

Decision on Appeal (05/25/2010) p. 12. Thereafter, on June 30, 2010, the Department filed its Petition for Findings of Fact and Conclusions of law. Among the requested conclusions of law were the following:

20. The life estate, as it existed the moment before the death of Melvin Peterson, is an asset of the estate, for purposes of the Department's Medicaid recovery claim, pursuant to Idaho Code § 56-218(4).

21. Had Melvin Peterson transferred the life estate to Cathie Peterson the moment before his death, the value of the transferred asset would have been determined pursuant to IDAPA 16.03.05.837, which is .38642 of the fair market value, or \$53,712.38. The life estate factor of .38642 of the fair market value of the real property is the appropriate valuation of the estate's interest in the real property gifted to Cathie Peterson by the Gift Deed of December 5, 2001.

22. Pursuant to Idaho Code § 56-218(4), the estate is the owner of a 38.642% undivided interest in the real property described in Exhibit "A."

Petition for Findings of Fact and Conclusions of Law (06/30/2010), p. 5, ¶¶ 20-22. At the hearing of this matter, the Department, having recently become the personal representative, submitted its "Personal Representative's Requested Findings of Fact and Conclusions of Law." These had been altered only to reflect the Department's changed role and the fact that Peterson was no longer personal representative. Among the requested conclusions of law were the following:

7. The life estate, as it existed the moment before the death of Melvin Peterson, is an asset of the estate, for purposes of the Department's Medicaid recovery claim, pursuant to Idaho Code § 56-218(4).

8. Had Melvin Peterson transferred the life estate to Cathie Peterson the moment before his death, the value of the transferred asset would have been

determined pursuant to IDAPA 16.03.05.837, which is .38642 of the fair market value. The life estate factor of .38642 of the fair market value of the real property is the appropriate valuation of the estate's interest in the real property gifted to Cathie Peterson by the Gift Deed of December 5, 2001.

9. Pursuant to Idaho Code § 56-218(4), the estate is the owner of a 38.642% undivided interest in the real property described in Exhibit "A."

Personal Representative's Requested Findings of Fact and Conclusions of Law (09/29/2011). As can be seen, the only difference is in the numbering and the removal of the fixed amount, since, as personal representative, the Department would need to proceed to District Court in a partition action to have the property sold and the proceeds divided.²

So, there was no surprise here. It should have been obvious to all that the primary issue for trial would be the valuation of the estate's interest in the real property. And this is exactly what the Magistrate decided. In his "Order re: Value of Estate Interest" the Magistrate held:

2. The value of the estate's interest in the real property gift deeded to Cathie Peterson, as recorded in instrument #204218 in Boundary County, shall be that proportion of the fair market value of the entire fee interest in the real property [legal description omitted] as calculated by the reference tables set forth in IDAPA 16.03.05.837, and the Department shall have a lien upon said property for such value;

3. Cathie Peterson is not entitled to any credit or offset for sums expended to maintain or improve the real property while in her possession;

Order re: Value of Estate Interest, pp. 1-2.

²While the Magistrate saw this as a new position of the Department, the ultimate purpose of the Department's petition to remove the personal representative was to allow the Department, as successor personal representative, to bring a partition action in District Court against Cathie Peterson. See Tr. (10/07/2010) p. 5, ll. 20-23; Respondent's Brief (02/25/2011), pp. 27-28.

III.

THE MAGISTRATE'S JUNE 12, 2008, ORDER ON PETITION TO REQUIRE PAYMENT OF CLAIM IS FINAL AND NOT SUBJECT TO APPEAL HERE.

A. The Magistrate's June 12, 2008, Order Should Not Be Subject to Challenge in this Third Appeal.

Peterson's first issue on appeal challenges the Magistrate's June 12, 2008, "Order on Petition to Require Payment of Claim" in which the Magistrate held that the life estate retained by the decedent was an asset of the estate for purposes of Medicaid estate recovery. *See* Appellant's Brief, pp. 5-9. In Peterson's first appeal to this court, then as personal representative, Peterson challenged this same order and holding. *See* Appellant's Brief (11/12/2009) pp. 6-12. The Department contended that the June 12, 2008, order was a final order that could have been appealed earlier, and, therefore, the appeal was too late, and barred. This court, however, held that the June 12, 2008, order was interlocutory and not appealable, and therefore, under the doctrine stated in *Matter of the Estate of Spencer*, 106 Idaho 316, 678 P.2d 108 (Ct. App. 1984), prior interlocutory orders could be reviewed. Decision on Appeal (05/25/2010), pp. 8-10. This court then remanded the matter for findings of fact and conclusions of law. *Id.* at 12.

In Peterson's second appeal to this court she challenged her removal as personal representative. Part of the grounds for her removal, however, was her failure to comply with the June 12, 2008 order requiring her to give an appropriate value to the life estate as an estate asset. Tr. (11/26/2010) p. 34, ll. 9-19. Her failure to comply with this order was also argued in the briefing. *See* Respondent's Brief (02/24/2011), pp. 25-26. Therefore, had Peterson desired to

challenge the June 12, 2008, Order, she should have done so no later than in the second appeal where it was directly in issue. Nothing in the *Estate of Spencer* case suggests the ability to challenge interlocutory orders goes on indefinitely.

If the court determines that the June 12, 2008, Order is still subject to appeal, then, the following argument shows the life estate is clearly an asset of the estate for purposes of Medicaid recovery:

B. The Life Estate Is an Asset Subject to Estate Recovery.

In 1993, Congress enacted the Omnibus Budget Reconciliation Act of 1993, commonly referred to as OBRA '93. This act, codified primarily in 42 U.S.C. § 1396p, contained a number of provisions intended to enhance Medicaid estate recovery, including strict restrictions on transfers to trusts and an expanded definition of estate. These changes were made to assure recovery of property that would otherwise pass outside of probate and, therefore might be lost to estate recovery. Idaho adopted the expanded definition of estate effective July 1, 1995. It is found in Idaho Code § 56-218(4):

(4) For purposes of this section, the term "estate" shall include:

(a) All real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law; **and**

(b) Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.³

³This language is taken word for word from 42 U.S.C. § 1396p(b)(4)(B).

Idaho Code § 56-218(4) (emphasis added). Therefore, for purposes of estate recovery, the estate subject to the Department's claim includes a retained life estate held by a Medicaid recipient or his spouse at time of death.

This, of course, is contrary to common law. At common law, a life estate terminated and the interest passed to the remainderman upon the death of the holder. Where, as here, the life estate passes an interest in property to a survivor or heir, Idaho Code § 56-218(4)(b) abrogates common law to the extent necessary to preserve the life estate interest for estate recovery. Oregon has an estate recovery law very similar to Idaho's (indeed it is likely that Idaho's original estate recovery law was copied from Oregon). Oregon has also adopted the expanded definition of estate for purposes of estate recovery. In the case of *State Dept. of Human Services v. Willingham*, 206 Or.App. 156, 136 P.3d 66 (2006), Oregon brought an action to recover the value of a life estate of a deceased Medicaid recipient where, like here, the property had been conveyed to the child of the Medicaid recipient, retaining a life estate. The facts are nearly identical to those here. In the *Willingham* case, however, the life estate had been created in 1993 before the 1995 adoption of the expanded definition of estate. The Medicaid payments had been made after the adoption of the new law. Therefore, the primary issue was whether the 1995 law would be applied to the 1993 life estate.⁴ The Oregon Court of Appeals examined the legal effect of the expanded definition of estate and its application to life estates and concluded that the law abrogated the common law, and the life estate interest was preserved after death for purposes of estate recovery:

⁴This issue is not present here. The life estate in this case was created December 6, 2001, well after the July 1, 1995, effective date of Idaho's law.

Based on that change in the law in 1995, we agree with the state that the legal effect of the legislature's amendment was to modify the common law rule that a life estate interest is extinguished under the circumstances established by the statute. For purposes of the recovery of medical assistance paid by the state during the lifetime of the holder of a life estate interest, the life estate continues to exist after the death of the person holding the interest.

Willingham, 206 Or.App. at 160, 136 P.3d at 68 (underline added); *see also Bonta v. Burke*, 98 Cal.App.4th 788, 120 Cal.Rptr.2d 72 (2002) (where the Medicaid recipient mother had retained a life estate and a right to revoke the remainder, the life estate was not extinguished on her death, but rather was an asset of the estate for purposes of estate recovery); *In re Estate of Laughead*, 696 N.W.2d 312 (Iowa 2005) (life estate in farm owned by deceased Medicaid recipient was required to be included in the estate for purposes of estate recovery).

All of these cases consistently construe the language of 42 U.S.C. § 1396p(b)(4)(B) which was adopted by each state, including Idaho.

C. The Value of the Life Estate Is Determined at the Moment Before Death.

Peterson claims the life estate has no value because it is extinguished at death. However, as shown by the cases cited above, the value of the life estate is determined the moment before death, not after. This issue was specifically addressed in the case of *In re Estate of Laughead*, *supra*:

Whether Ruby, "at the time of her death," had an interest in the real property at issue here is determined as of a point in time immediately before her death. *See In re Barkema Trust*, 690 N.W.2d 50, 56 (Iowa 2004) (holding "the phrase 'at the time of death' means the time immediately before the Medicaid recipient's death"). Immediately prior to her death, Ruby held a life estate in 338 acres of land. For reasons that follow, we hold her life estate constituted an interest in real property within the meaning of section 249A.5(2)(c).

In re Estate of Laughead, 696 N.W.2d at 316. Any other interpretation would make the life estate language in Idaho Code § 56-218(4)(b) a nullity. The court, of course, will not give a statute an interpretation which would render it a nullity. *State v. Beard*, 135 Idaho 641, 646, 22 P.3d 116, 121 (App. 2001). The purpose of the expanded definition of estate is met by recognizing the value of the property at the moment before the death of the Medicaid recipient.

Peterson offers a novel interpretation of Idaho Code § 56-218(4)(b) in which she says it would apply if the decedent had given Peterson his own life estate, i.e., transferred the property to her for his life. However, that doesn't make any sense because the property would then revert to his estate on his death and would be part of the ordinary probate estate. If that were the case, Idaho Code § 56-218(4)(a) would apply, and the life estate language in subsection (4)(b) would be totally superfluous. Peterson's interpretation is not supported by any case law or other authority.

Judge Julian was also persuaded by the opinions of Judge Gaskill in the very similar Second District case of *Matter of the Estate of Grothe*, Nez Perce County Case No. CV02-02163 which he attached to his decision in this matter.

IV.

THE COURT CORRECTLY APPLIED THE DEPARTMENT'S LIFE ESTATE VALUATION RULES.

Peterson argues that the life estate tables in Rule 837⁵ should not be used because the tables should be applied only during the lifetime of the Medicaid recipient. Appellant's Brief, p. 10. That argument is not based on any specific language in the rule and does not make sense.

⁵IDAPA 16.03.05.837.

The life estate must be valued immediately before death. As explained in *In re Estate of Laughead*, *supra*:

Whether Ruby, “at the time of her death,” had an interest in the real property at issue here is determined as of a point in time immediately before her death. *See In re Barkema Trust*, 690 N.W.2d 50, 56 (Iowa 2004) (holding “the phrase ‘at the time of death’ means the time immediately before the Medicaid recipient’s death”). Immediately prior to her death, Ruby held a life estate in 338 acres of land. For reasons that follow, we hold her life estate constituted an interest in real property within the meaning of section 249A.5(2)(c).

In re Estate of Laughead, 696 N.W.2d at 316. Had Melvin Peterson signed a quit-claim deed immediately before his death, ceding his life estate interest to Cathie Peterson, the tables found in Rule 837 would be applied. It makes no sense to say that some other measure should be used a few moments later after Melvin Peterson had expired.

Peterson, for her part, has offered no other basis for valuing the life estate, other than to again argue that there should be no value at all, in essence inviting the court to ignore section 218(4)(b) entirely. Appellant’s Brief, p. 12. This is not a reasonable alternative. Having failed to offer any reasonable alternative valuation of the life estate, Peterson should not be permitted to simply object to the reasonable and obvious application of the life estate tables in Rule 837.

V.

THE MAGISTRATE HAD JURISDICTION TO DETERMINE AND VALUE ESTATE ASSETS.

Peterson argues that the Magistrate lacked subject matter jurisdiction to determine the estate’s interest in the real property. Appellant’s Brief, p. 13. She cites *In re Lundy’s Estate*, 79 Idaho 185, 312 P.2d 1028 (1957) for the proposition that the probate court does not have authority to determine title to real property as between the estate or heirs and third parties.

However, just as in *Lundy's Estate*, Peterson is not a third party. The dispute in *Lundy's Estate* was between the decedent's surviving wife and his children from a prior marriage. The issues that had to be decided included the validity of certain quitclaim deeds and a property settlement agreement and whether, in light of those documents, the estate consisted of either community or separate property. As to jurisdiction to determine the real property issues, the court explained:

It is the general rule that where title to real property is in issue between an estate and its heirs and a third person, such issue must be tried in an independent action brought for that purpose in a competent tribunal and cannot be tried by the probate court.

However, this is not such a case. Here the issue is between the administratrix claiming as sole heir and appellants claiming they are the sole heirs. In probate proceedings the probate court is a court of record and has 'original jurisdiction in all matters of probate, settlement of estates of deceased persons, and appointment of guardians'. We have held that this probate jurisdiction bestowed on the probate court by the constitution is exclusive.

* * *

Here no stranger or third party is involved. The issue is drawn between rival claimants to heirship. As between such parties the probate court has jurisdiction to settle all issues essentially involved in a determination of who are the heirs, and the distributive share or shares of each.

In order to determine whether the property was community or separate and thus to determine to whom it should descend it was necessary for the probate court to pass upon the validity of the quitclaim deeds and the property settlement agreement.

'Whether the property was separate property or community property was one of the questions to be determined by the probate court and by the parties submitted to that court for its decision. That court had authority to determine the persons who, by law, were entitled to the property, and also the proportions or parts to which each was entitled, who were the heirs of the deceased, and who were entitled to succeed to the estate, and their respective shares and interests therein.'

Lundy's Estate, 79 Idaho at 193-4, 312 P.2d at 1032-3 (citations omitted; underline added). Just as in *Lundy's Estate* Peterson is not a stranger or third party; she is the daughter of the decedent and an heir of the estate. The question before the probate court was whether the life estate

interest passed to her on the decedent's death or whether it remained an asset of the estate. Having determined that the life estate was an asset of the estate, the probate court was also competent to decide its value. While Peterson, who was personal representative for most of the time this matter has been pending, likes to portray herself as an outsider and a third party, nothing could be further from the truth.

Idaho Code § 1-2208(2) assigns probate and estate administration cases to the magistrates. This is so irrespective of the value of the estate or its assets. *Keeven vs. Estate of Keeven*, 126 Idaho 290, 882 P.2d 457 (App. 1994). Idaho Code § 15-3-104 gives exclusive jurisdiction to this court to determine claims against the decedent and his successors:

No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this chapter.

* * *

Idaho Code § 15-3-104 (underline added). Peterson is, very clearly, a successor to Melvin Peterson, as well as an heir. She is Melvin Peterson's daughter and the ordinary successor to the remainder interest in the life estate.

Moreover, the personal representative of an estate has the authority and duty to value the assets of the estate. Idaho Code § 15-3-706. The personal representative may petition the court and seek orders related to his duties. Idaho Code § 15-3-105. Clearly the court had authority to enter an order valuing the life estate as an estate asset.

The issue here is not whether the probate court could partition the property to divide estate assets from non-estate assets. Now that the Department is the named personal

representative, the Department intends to proceed to District Court with a partition action. The Department represented as much to the Magistrate who made that part of his order. So any division of the real property will ultimately be done by the District Court. The Magistrate merely determined the assets of the estate and the value as between the estate and Peterson, an heir. This was clearly with the authority of the probate court.

Likewise, there is no issue here with regard to personal jurisdiction. Probate cases are in the nature of proceedings *in rem* and the court's orders apply to all who are given notice. As stated in *Connolly v. Probate Court in and for Kootenai County*, 25 Idaho 35, 136 P. 205 (1913):

The Supreme Court of California in that case, after stating that the proceeding for the distribution of an estate is in the nature of a proceeding *in rem*, which is in the hands of an administrator or executor for distribution, says: "By giving the notice directed by the statute, the entire world is called before the court, and the court acquires jurisdiction over all persons for the purpose of determining their rights to any portion of the estate; and every person who may assert any right or interest therein is required to present his claim to the court for its determination. ***"

Connolly, 25 Idaho at ___, 136 P. at ___ (quoting *William Hill Co. v. Lawler*, 116 Cal. 359, 48

Pac. 323). Notice requirements for probate proceedings are set forth in Idaho Code § 15-1-401.

There is no question that Peterson had notice of these proceedings since she participated in them.

Idaho Code § 15-3-106 states:

Subject to general rules concerning the proper location of civil litigation and jurisdiction of persons, the court may herein determine any other controversy concerning a succession or to which an estate, through a personal representative, may be a party. Persons notified are bound though less than all interested persons may have been given notice.

Idaho Code § 15-3-106 (underline added). Peterson appeared at the evidentiary hearing, participated, and offered her own evidence. It cannot be more clear that the court has jurisdiction

to determine the rights between the Department and Peterson relating to the assets of this estate, including the life estate.

Finally, the evidentiary hearing was held at the urging of this Court at the conclusion of oral argument on Peterson's second appeal, and was for her benefit, to permit her to present such evidence and arguments as she thought necessary. The personal representative could simply have assigned the value of the life estate and proceeded to bring a partition action in the District Court. It seems odd that Peterson would object to the jurisdiction of the court to determine issues she presented at a hearing held for her own benefit.

VI.

THE COURT CORRECTLY REFUSED TO GRANT AN OFFSET TO CATHIE PETERSON.

Peterson complains that the Magistrate "[i]nexplicably . . . disregarded Cathie's documented investment into the property" Appellant's Brief, p. 15. However, Judge Julian neither disregarded her evidence nor was his ruling inexplicable. To the contrary, Judge Julian found that the expenditures made were "improvements and not mere maintenance."

Memorandum Opinion, p. 6. He then went on to say:

However, there is no evidence before the court to demonstrate the enhancement in fair market value to the property as a result of said material improvements. The court agrees with the State that where equitable contractual relief is sought, the proper measure of unjust enrichment is the increase in value to the asset improved, and not the amount expended. *Nielson v. Davis*, 96 Idaho 314, 528 P.2d 196 (1974).

In her Responsive Brief, Ms. Peterson argues that she should be given a dollar for dollar credit, but fails to quantify the total dollar amount she seeks. No expert witness testimony was offered at hearing regarding the resulting enhancement in value to the house. Nor did Cathie Peterson, as owner of the property, offer the court her opinion of the property's enhancement in value as a

result of her improvements and expenditures. Having failed to supply the court with sufficient evidence to quantify her claim to enhanced value, the court must decline Ms. Peterson's request for a credit offset.

Id.

This holding is well supported in the record. At the hearing of this matter, Cathie Peterson testified of the expenses she incurred while maintaining the real property. She also testified that she had never paid rent for her occupying the real property, including during the time that the decedent was the life tenant. She testified that the decedent went into the nursing home shortly after the gift deed was executed in 2001. Therefore, she occupied the home alone until his death in 2007. It is understandable that she would at least maintain the property.

To the extent that Peterson sought an offset for improvements to the property, it was incumbent on her to show that the improvements actually enhanced the value of the property. When directly asked if the work she testified to increased the value of the property she was unable to say it did or to quantify it:

Q: Do you know whether, uh, whether any of the maintenance you did to the house, somehow, increased it's value?

A: Very hard to say. I don't know.

Tr. p. 38, ll. 7-9. The Magistrate's denial of an offset is well supported in fact and law.

VII.

THE DEPARTMENT SHOULD BE AWARDED ATTORNEY FEES ON APPEAL

Idaho Code § 12-117 provides as follows:

(1) Unless otherwise provided by statute, in any administrative proceeding or civil judicial proceeding involving as adverse parties a state agency or political subdivision and a person, the state agency or political subdivision or the court, as the case may be, shall award the prevailing party reasonable attorney's fees,

witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

Idaho Code § 12-117 (underline added). Peterson's appeal meets the requirements for this section. With regard to the application of the expanded definition of estate to life estates, Peterson has offered no authority and no reasonable argument that the life estate is not an asset of the estate. Similarly, she has offered no theory of law or other authority to support her claim that she should be given an offset for expenditures on her home without showing any increase in value of the home. Finally, she continues to challenge the application of the Department's life estate tables without offering any alternative method of valuation. Instead, she continues to claim the life estate can have no value, which is part of the reason for her removal as personal representative which was upheld on appeal. Peterson's appeal is without any reasonable basis in fact or law and attorney fees should be awarded to the Department.

VIII.

CONCLUSION

Cathie Peterson received the real property she now occupies as a gift. The taxpayers, through the Medicaid program, expended \$171,386.94 in caring for the decedent after he gifted his property to his daughter and before his death. The law provides that the life estate which the decedent retained be used to offset, in a small measure, the amount expended for his care. This is the third appeal Cathie Peterson has brought, together with more than four years of litigation in an attempt to avoid this repayment. It is time the Department's rights to the life estate be finally established so the Department can proceed in seeking a partition and ultimate payment.

DATED this 18 day of June, 2012,


W. COREY CARTWRIGHT
Deputy Attorney General

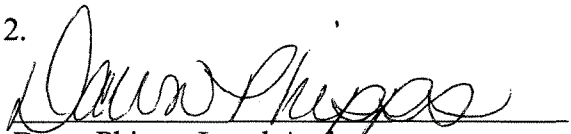
CERTIFICATE OF MAILING

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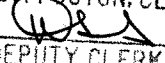
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DATED this 18 day of June, 2012.


Dawn Phipps, Legal Assistant
Contracts and Administrative Law Division

FILED

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STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY  DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY**

In the Matter of the Estate of	)	CASE NO. CV-2007-00266
)	
MELVIN PETERSON,)	
)	
Deceased.)	
_____)	

APPELLANT'S REPLY BRIEF

APPEALED FROM THE MAGISTRATE DIVISION
FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR BOUNDARY COUNTY

HONORABLE JUSTIN JULIAN
Magistrate

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I. STATEMENT OF FACTS/PROCEDURAL HISTORY

In response to the Respondent's ("State") Brief and their Statement of Facts, Cathie Peterson ("Cathie") will not recite all facts in this Reply Brief, but rather respond to the assertions and misinformation contained in the Respondent's Brief.

Procedurally, the State misrepresents the history of this matter and the legal affect of that procedural history.

While it is true the Trial Court entered an Order on June 12, 2008, requiring payment of the State's claim. That Order bears little or no relationship to the issues on this appeal. The issue raised in the State's Petition for Payment of Claim was whether or not their claim was valid, not whether or not Melvin's Estate has assets, and what those assets consisted of, to satisfy the State's claim.

Regardless, the State moved to compel the sale of Cathie's home on July 15, 2009, and after hearing on July 28, 2009, the Trial Court then entered its Order Granting the State's Petition to Compel Sale of Cathie's home on August 11, 2009. The August 11th decision by the Trial Court was appealed resulting in this Court's Decision on Appeal dated May 25, 2010, vacating the Trial Court's Order and remanding with instructions that the Trial Court make Findings of Fact and Conclusions of Law before the legal issues could be properly addressed on appeal.

After much passage of time and a second appeal following the removal of Cathie as Personal Representative, the Trial Court took evidence on September 29, 2011, as proffered by the State. The State asserted they were asking the Trial Court for Findings of Fact and Conclusions of Law as directed by the District Court on remand from the first appeal. Following the hearing and a

briefing schedule, the Trial Court issued a Memorandum Decision on December 22, 2011, and an Order Re: Value of Estate Interest on January 10, 2012.

Cathie timely appealed the Trial Court's Decision and Order. The State does not assert that this appeal is untimely or improper, but mysteriously argues without explanation that this Court should not hear Cathie's appeal as it somehow relates to the June 12, 2008, Order on Petition to Require Payment of Claim. State's Brief, Additional Issues on Appeal, p.7.¹

¹ The State at various times refers to this Order by different dates. It is assumed the State is referring to the Order on Petition to Require Payment of Claim dated June 12, 2008.

II. ARGUMENT

A. Standard of Review

The State correctly recites the law in Idaho regarding Standard of Review when appealing Findings of Fact, but avoids discussing the Standard of Review on appeal from the Trial Court's Conclusions of Law or mixed Findings of Fact and Conclusions of Law.

"The review of a trial court's decision after a court trial is limited to ascertaining whether the evidence supports the findings of fact and whether the findings of fact support the conclusions of law." Griffith v. Clear Lakes Trout Company, Inc., 143 Idaho 733, 735, 152 P.3d 604, 606 (2006).

"In reviewing a trial court's conclusions of law, however, a different standard applies: this court is not bound by the legal conclusions of the trial court, but may draw its own conclusions from the facts presented." Id.; citing Idaho Forrest Industries, Inc. v. Hidden Lake Watershed Improvement District, 135 Idaho 316, 319, 17 P.3d 260, 263 (2000).

When reviewing mixed issues of law and fact, the Appellate Court reviews "freely" those mixed issues of law and fact. Havelick v. Chobot, 123 Idaho 714, 717, 851 P.2d 1010, 1013 (App.1993).

B. The Decision of the Magistrate.

Section II of the State's Respondent's Brief badly misstates and misconstrues Cathie's Appellant's Brief by spending several pages discussing the question of whether Cathie argues unfair surprise. This issue was not raised by Cathie (intentionally or unintentionally) in the Appellant's Brief. Rather, Appellant's Brief noted that on remand, no additional pleadings relevant to these issues were filed from May 25, 2010, until the trial on September 29, 2011. At trial, the State

correctly represented to the Trial Court that it was seeking the entry of Findings of Fact and Conclusions of Law, as had failed to occur when entering the August 11, 2009, Order Granting Petition to Compel.

The entirety of Section III of Respondent's Brief is moot where the State argues that Cathie is appealing the Magistrate's June 12, 2008, Order. The State argues that that Order was final and not subject to appeal, but fails to: a) Make a connection between the June 12, 2008, Order to require payment of claim and the issues which are on appeal in this matter, which is the Trial Court's Order Re: Value of Estate Interest dated January 10, 2012; and b) the State provides no legal authority for its contention that Cathie was required to appeal the June 12, 2008, Order on Petition to Require Payment of Claim in order for Cathie to now appeal the Magistrate's Order Re Value of Estate Interest entered in January of this year.

Perhaps, the confusion found in Respondent's Brief is due to the State's misunderstanding of probate law.

Idaho Code § 17-201 defines what judgments may be appealed from the Magistrate Court in probate matters.

As this Court noted in its Decision on Appeal entered May 25, 2010:

On June 12, 2008, the Trial Court entered an "Order on Petition to Require Payment of Claim" granting the Department's Petition and ordering that the life estate interest Mr. Peterson held in the real property at the time of his death be deemed an asset of the estate for the limited purpose of Medicaid estate recovery by the Department. The Court also ordered that the Personal Representative pay the Department's claim *to the extent of available assets in the estate*.

Decision on Appeal, p.2
(italics added)

This District Court also held that the June 12, 2008, Order was interlocutory and not appealable as follows:

The trial court did not determine any value, nor distribute, nor set aside, nor partition the life estate in the Order itself. Accordingly, no basis for appeal of the June 12, 2008, Order exists pursuant to Idaho Code § 17-201(4)(5) and/or (7). Therefore, that Order is interlocutory, not final, and thus not appealable.

Decision on Appeal, p.9
(italics added)

In short, the arguments contained in Respondent's Brief, starting at page 9 and running through the top half of page 13 were previously asserted by the State and rejected by this District Court in the first appeal. The State did not appeal this Court's Decision on Appeal in May, 2010. This Court's Decision determining the June 12, 2008, to be an interlocutory and therefore not appealable Order is the law of the case by which the State is bound.

C. Melvin's Life Estate is Not An Estate Subject to Estate Recovery Under Idaho Code § 56-218(4).

Having disposed of the red herring issues raised, again, by the State in the first several pages of Respondent's Brief, we come again to the core issue on appeal, the reading of Idaho Code § 56-218(4). The State persists in reading language into the statute that does not exist so as to reach the conclusion they desire rather than the conclusion found in Idaho law.

By the Respondent's contention, Idaho Code § 56-218(4) abrogated the common law principles of life estate, and determined that life estates are an asset of the estate and are valued at a time prior to the decedent's death. As will be shown below, Idaho's statute does not support either conclusion argued by Respondent.

1. I.C. § 56-218(4)

First, subsection (a) acknowledges that assets of an estate should include all assets defined by state probate law. Idaho Code § 56-218(4)(a). As established in Appellant's Brief, that provision adds nothing to the common law definition, and bolsters Appellant's position on this appeal that a life estate is not to be included in the decedent's estate. The State does not challenge Appellant's position, and relies entirely upon subsection (b).

Second, subsection (b) should be read carefully for what it actually says, rather than what the State would like it to say:

1 "Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest)....." This phrase, in and of itself, adds nothing to the definition, since Idaho law and common law is a clear that a life estate expires on death and, therefore, decedent has no interest in a life estate at the time of death.

2. The State relies entirely upon the latter half of subsection (b) which states

".....including such assets conveyed to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement." On this part, the State grabbed onto the words "life estate" assuming that the Court will paraphrase the

statute, like the State has, to conclude that said language modifies Idaho common law to include a life estate in the decedent's estate at death. The statute simply does not say that.

When read in its entirety, subsection (b) permits the inclusion of any property held by the decedent at the time of his death to the extent of the decedent's interest and also allows the estate to draw back into estate, assets which were conveyed by specific means, (i.e., joint tenancy, tenancy in

common, survivorship, life estate, living trust or other arrangement) prior to death. However, here Melvin never conveyed a life estate. He retained one when he conveyed fee simple title to Cathie.

The State persists in ignoring the plain reading of Idaho Code § 56-218(4)(b). The statute, as it plainly reads, requires the estate to include assets in which Melvin still retained a legal interest and which may have been conveyed by joint tenancy, tenancy in common, survivorship, life estate or living trust. None of these apply to the December, 2001, deed from Melvin to Cathie. Melvin conveyed fee title to Cathie in 2001. He retained to himself a life estate. This is nowhere discussed in I.C. § 56-218(4) despite the State's insistence otherwise.

For example, had Melvin conveyed fee ownership to Cathie in a joint tenancy, tenancy in common, or by tenancy with right of survivorship reserving interest to himself, this would be an asset to be included in Melvin's estate under subsection (b). This is true even if Melvin had included survivorship language, which might normally result in title passing to co-tenants upon Melvin's death.

However, nothing in the statute directs this Court to the State's conclusion that the common law principles of life estates were abrogated by I.C. § 56-218(4). The only logical explanation for the State's argument is a conclusion that the State misunderstands the nature of real estate law and real estate conveyances.

The State argues an Oregon decision Department of Human Services v. Willingham, 136 P.3d 66 (2006) as if it resolves the question of interpreting Idaho Code § 56-218(4)(b). The State even goes so far as to argue that the facts of the Oregon case are nearly identical as those presented in this matter, a brazen misstatement of the Willingham decision.

Oregon law and the facts in Willingham differ greatly from the facts in this case as follows:

1. The Oregon Court of Appeals noted that Willingham involved a lawsuit by the Department against the son of a recipient of medical assistance. The state brought action under Oregon statute and regulation, which provides that the recipient of property is liable to the State for the benefits claimed and to the extent of the decedent's interest in that property.

2. In pertinent part the Oregon statute provides that "in an action or proceeding under this section to recover medical assistance paid, it should be the legal burden of the person who receives the property or other assets from a Medicaid recipient to establish the extent and value of the Medicaid recipient's legal title or interest in the property or assets in accordance with rules established by the Department". ORS 411.620(4). No such similar provision exists in statutes of Idaho.

3. There are distinctions and differences in the language of the Oregon statute than that found in Idaho Code § 56-218(4), which are distinctions the State ignores in Respondent's Brief while asserting to this Court it should adopt the reasoning of the Oregon Court of Appeals.

For the reasons set forth above, this Court should disregard Respondent's citation to Oregon law as binding this Court. Appellant asks this Court to review the Idaho statute on its face and without regard to the Oregon Court of Appeals' Decision.

Additionally, Oregon's statutes specifically address life estates as an estate asset and how they should be measured in the estate at the time of death, and such statutes were discussed by the Oregon Court of Appeals in Willingham. 136 P.3d at 70.

Further, Oregon has an administrative regulation, which specifically addresses how courts are to include and value life estates held by the recipient of public assistance at the time of their death and that they are to be valued pursuant to the table set forth in the Oregon Administrative

Rules irrespective of the actual lifespan of the measuring life. Willingham, 206 Or.App.156, 164-5, 136 P.3d 66, 70 (2006); citing OAR 461-135-0845.²

While the State in this matter argues the use of the asset transfer penalties found in Rule 837 as a valid means of valuing the life estate, they have no rule, such as Oregon, that directs the use of such a table when valuing a life estate after the death of the recipient.

For the reasons set forth above, the Respondent's assertion that Oregon law is applicable is unpersuasive and should be rejected.

D. There is no Idaho Authority for Valuing a Life Estate "At the Moment Before Death" in the Estate of the Decedent.

The State relies upon Iowa case law asserting that this Court and the Trial Court are required to look at the value of Melvin's life estate at the moment before his death to assess its value to the Estate for recovery purposes. The State does not cite this Court to a single precedential case or statute in Idaho for this contention.

As with the prior section, it appears the State relies upon Iowa law resting upon case law, in other states, specifically Iowa, which rests upon Iowa statutory schemes different from Idaho's law. Failing to reconcile this in any way, the State simply forges ahead with its fictional presumption that Idaho has somehow abrogated the common law principles that a life estate terminates at death, therefore, is not included in the decedent's estate under the probate provisions. Tobias v. State Tax Commission, 85 Idaho 250, 255, 378 P.2d 628, ____ (1963); 121 Am.Jur. Proof – Proof of Facts 3d, 101 (2011); Idaho Code § 15-3-706 [inventory includes that owned by the decedent at the time of his death].

² This is particularly relevant to the second half of Appellant's argument wherein Cathie challenges use of the Asset Transfer Penalty Table found in I.D.A.P.A. 16.03.05.837 also

In Barkema, cited in Respondent's Brief, the Iowa Court construed the value at a point immediately prior to death in determining whether or not the deceased recipient's trust should be distributed to the beneficiaries or to Medicaid Recovery. Obviously, Barkema is distinguishable since conveyances to trusts are specifically included in Idaho Code § 56-218(4)(b) as an asset of the estate.

The State also argues the Iowa case of Laughead, 696 NW 2d, 312 (Iowa, 2005). However, again, Iowa law differs from Idaho's statutory scheme. As the court in Laughead noted, Iowa legislation allows recovery against any interest held by the recipient at the time of death "to the extent of such interest including, but not limited to, interest in jointly held property and interest in trusts". Iowa Code § 249A.5(2)(c)(1995).

Additionally, Iowa Code further makes such assets expressly subject to probate. The Laughead court noted that as of 2002, the Iowa legislature modified the statute so as to expressly "reach interests in real property 'including, but not limited to, interests in jointly held property, retained life estates, and interest in trusts'". In Re Estate of Laughead, 696 NW 2d, 312, 315 (Iowa, 2005); quoting Iowa Code § 249A.5(2)(c) as amended, effective April, 2002 [emphasis added].

Once again, the State persists in misrepresenting other jurisdiction's law to argue the outcome they desire regardless of what Idaho statute says. The State cites to no precedent in Idaho and the foreign jurisdictions cited and distinguishable with significantly different statutory definitions than found in Idaho law.

For the reasons set forth above, this Court should vacate Judge Julian's Order Re Value of Estate Interest as being erroneous as a matter of law.

referenced as Rule 837 in Appellant's Brief, p.10.

E. The State Offers No Further Justification for Use of Rule 837, the Medicaid Asset Transfer Penalty Tables.

Interestingly, the State makes no attempt to rebut Cathie's argument that the Asset Transfer Penalty Tables are, by their plain terms, intended as a means to assess asset transfer penalties upon a Medicaid applicant, during his lifetime and during the "look back" period. This is the exact wording of Rule 837 and the State cannot deny the intended application of Rule 837. Despite this, the State argues that this is the only measure that can "sensibly" be used and it is explicitly stated in Respondent's Brief their assumption that the Court must apply the Rule 837 Tables to the life estate at a point "several moments" before Melvin's death. To do otherwise, renders the State's argument ridiculous.

As indicated, the State had to convince the Trial Court and now has to convince this Court on appeal to value Melvin's life estate prior to his death because to do otherwise flies in the face of Idaho law. The value of a life estate is determined by taking into account the age and life expectancy of the life tenant. See West v. Tax Commission, 99 Idaho 26, 27, 576 P.2d 1060, 1061 (1978).

Clearly, valuing Melvin's life estate after his death is impossible since there is no life
"expectancy" after his death.

Indeed, logic flies in the face of the State's position in this matter. The value of a life estate is measured by what a knowledgeable buyer would pay factoring in the value of occupancy and use of the real property during the life expectancy of the measuring life. Once Melvin died, the valuation measures ceased to exist.

Additionally, the State has the audacity to argue that Cathie has offered no alternative basis for valuing the life estate other than the Rule 837 Table. This is a blatant misrepresentation of the record. The record will reflect that on August 6, 2008, Cathie filed a Motion to Hire Appraiser, and the State objected five (5) days later on August 11th. In the end, the Trial Court agreed with the State allowing Cathie to only engage an appraiser for the purpose of valuing fee ownership in the property, not a value of the life estate. To now assert that Cathie failed to offer an alternative is at best a disingenuous argument by the State. The State set out at the outset of this Estate in 2007 to dictate the manner in which Melvin's life estate would be handled and valued using only Rule 837. As this Court is well aware, life estates are frequently valued by appraisers and actuarial experts, but Cathie and the Estate were deprived of that opportunity by the Trial Court and by Respondent.

For the reasons set forth above, the use of Rule 837 was an erroneous valuation by the Trial Court and constitutes reversible error. This Court should reverse and remand with instructions to value Melvin's life estate at the time of his death through the use of an appropriate, qualified expert.

F. Jurisdiction

On this subject, the State really raises no case law or argument that it has, through service of process, correctly engaged the jurisdiction of the Court over Cathie Peterson, individually. The State seems to argue in ad nauseum that because Cathie is Melvin's daughter that she is somehow "not a stranger" and, therefore, should be deemed a party to the litigation. This overlooks the basic principles of jurisdiction and due process cited in Appellant's Brief. The State argues that because Cathie offered evidence at hearing that she somehow submitted to the Court's jurisdiction and that due process, service of process and other jurisdictional niceties can be overlooked. Cathie Peterson, individually, never appeared voluntarily before the Court. Rather, the undersigned filed a Special

Appearance reserving jurisdictional issues on behalf of Cathie Peterson, individually, and did so only after the State made it clear that it intended to take Cathie's home from her in order to satisfy their Medicaid claim against Melvin.

The State was forewarned of the jurisdiction issues on the first appeal to this Court, when the Court stated: "..... the Trial Court must have concluded that it had jurisdiction over real property, which is vested in a person who is not a party to the proceeding" Decision on Appeal, p.10.

"A judgment entered without meeting the jurisdictional requirements of service of process or due process deprives the court of jurisdiction over the person and is void." McGlooin v. Gwynn, 140 Idaho 727, 729, 100 P.3d 621, 623 (2004).

Lastly, the State argues on page 21 in Section V that the hearing in September, 2011, was for Cathie's benefit. This is so perplexing as to be absurd. This Court on appeal previously reversed and remanded with instructions to the Trial Court that it make appropriate Findings of Fact and Conclusions of Law. The Trial Court in response thereto set the matter for trial September 29, 2011, and the State, as the moving party, presented evidence and sought the Court's entry of an Order Re Value of Estate. Nothing about this procedure was for the benefit of Cathie. It was, however, for the benefit of following the law and lawful procedure that this Court reversed and remanded in May, 2010, with instructions to take evidence and make appropriate Findings of Fact and Conclusions of Law.

The State proffers nothing to this Court which would give evidence of its jurisdiction over Cathie Peterson, individually. The Court should bear in mind that Cathie had an untenable choice after the State caused her to be removed as Personal Representative: either decline to participate

further and thereby risk losing her home, or participate reserving jurisdictional issues. Cathie chose the latter, but did so specifically reserving those jurisdictional issues. The State's arguments to the contrary are simply unavailing.

G. The Trial Court Failed to Grant Cathie Appropriate Credit for Improvements to Her Home.

Without citing any case law, the State argues that the Trial Court correctly deprived Cathie of several thousand dollars in documented improvements to the property. The Trial Court in its Memorandum Decision likewise failed to support that finding with any law. The Appellant's Brief filed by Cathie in this matter has set forth the legal basis for her recovery, and this Court is asked to reverse and remand with instructions to give Cathie credit for the documented improvements made to her property should this Court affirm the Trial Court's Order Re Value of Estate as it regards the inclusion of the life estate and its valuation under Rule 837.

H. Attorneys' Fees on Appeal

~~The State argues under Idaho Code § 12-117 that it is entitled to attorneys' fees. It is clear~~
that this matter is a case of first impression, as neither the State nor Cathie has cited the Court to any Idaho case law on the matters set forth in this appeal. In matters of first impression, neither
~~party is entitled to attorneys' fees. It is clear that this matter is a case of first impression, as neither~~
the State nor Cathie has cited the Court to any Idaho case law on the matters set forth in this appeal.
In matters of first impression, neither party is entitled to attorneys' fees. Trunnell v. Fergel, 153
~~Idaho 68, 278, P.3d 938 (2012).~~ However, given the absurd and nonsensical arguments of the
State, Appellant seeks attorneys' fees on the basis that Respondent has acted frivolously and unreasonably.

For these reasons, this Court should not award attorneys' fees and costs to the Respondent on appeal.

III. CONCLUSION

For the reasons set forth above, the Court should reverse the Trial Court's Memorandum Decision and Order Re Value of Estate.

DATED this ____ day of July, 2012.

FEATHERSTON LAW FIRM, CHTD.

By: 

BRENT C. FEATHERSTON
Attorney for Cathie Peterson
Individually

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of July, 2012, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

John A. Finney, Esq.
FINNEY, FINNEY & FINNEY, P.A.
120 East Lake Street, Suite 317
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Hon. Steve Verby
District Court Judge
1500 Highway 2
Sandpoint, ID 83864

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By 

ORIGINAL

FILED 11/16/12 AT
10:45 A.M. IN CLERK'S OFFICE, IDAHO
 BY [Signature]

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY**

IN THE MATTER OF THE ESTATE OF)	CASE NO. CV07-00266
)	
MELVIN PETERSON,)	OPINION AND ORDER ON
)	APPEAL OF MAGISTRATE
Deceased.)	COURT'S RULING RE
)	MEDICAID CLAIM
)	

This matter is before the Court on appeal of the magistrate court's ruling regarding the value of the deceased's remainder interest upon termination of his life estate for purposes of Medicaid reimbursement. The Court heard oral arguments on the appeal on October 12, 2012. Respondent Department of Health and Welfare ("Department") was represented by attorney W. Corey Cartwright from the State of Idaho Attorney General's office. Appellant Cathie Peterson, daughter of Melvin Peterson, was represented by Brent C. Featherston. The Court, having read the Memorandum Opinion and Order Re: Value of Estate Interest entered by the magistrate court and the briefs filed by the parties, having heard oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

FACTUAL AND PROCEDURAL BACKGROUND

The magistrate court found the following facts to be undisputed.¹ Melvin Peterson ("Melvin") was born on [REDACTED] and died at the age of 83 on March 3, 2007. Prior to his death, Melvin was the owner of residential real property located in Boundary County. On December 6, 2001, Melvin executed a Gift Deed of his real property to his daughter, Cathie Peterson, retaining for himself a life estate in the property.² Shortly thereafter, Melvin applied for Medicaid and began receiving Medicaid benefits in March 2003. At the time of his death, Melvin had received a total of \$171,386.94 in Medicaid benefits.

Cathie Peterson ("Cathie") was named Personal Representative of Melvin's estate in July 2007. On August 6, 2007, Cathie sent a notice to creditors to the Department of Health & Welfare ("Department") but, when the Department filed a claim for \$171,386.94 against the estate in the probate action, Cathie denied the claim without reason. The Department filed an Amended Claim against the estate along with a Petition for Allowance of Amended Claim. Cathie again denied the claim without reason and filed an objection to the Petition for Allowance of Amended Claim. On March 25, 2008, a hearing was held on the Department's Petition, after which the Court entered an Order granting the Petition for Allowance of Amended Claim.

On May 5, 2008, the Department filed a Petition to Require Payment of Claim along with a supporting brief setting forth the Department's demand for payment of the value of the life estate pursuant to I.C. § 56-218(4)(b). On May 28, 2008, Cathie filed a Personal Representative's Inventory and objection to the Department's Petition. Following a June 12, 2008 hearing, the magistrate court entered an Order establishing the life estate remainder interest as an asset of the estate for purposes of Medicaid recovery, and ordering Cathie to amend the

¹ Memorandum Opinion of Magistrate Judge Justin Julian filed on December 22, 2011.

² Cathie Peterson does not dispute that she paid no monetary consideration for the property.

Inventory to assign an appropriate value to the life estate. However, Cathie instead filed and was granted a motion to hire an appraiser to determine the fee simple value of the residential real property.³ When no appraisal was ever filed by Cathie, the Department filed various motions relative to appraisal, sale of the property and payment of the Department's claim.⁴ On August 11, 2009, the magistrate court granted the Department's motions to compel appraisal, sale of the property and payment of the Medicaid claim. Cathie subsequently appealed the grant of the motions.

On appeal, the District Court vacated the magistrate's Order and remanded the matter back to establish findings of facts and conclusions of law.⁵ Shortly after the ruling on appeal was entered, Cathie sought permission from the magistrate court to sell the property, liquidate an escrow account, and to pay counsel for the personal representative of the estate (Cathie).⁶ On the same day, Cathie filed an Amended Personal Representative's Inventory assigning the life estate zero value.

On September 17, 2010, attorney Brent Featherston filed a Demand for Notice and Special Appearance, stating he represented Cathie in her personal capacity and that he was seeking to vacate and dismiss all orders entered by the magistrate court regarding "Cathie's" real property.⁷ Cathie, in her capacity as personal representative of her father's estate, remained represented by attorney John Finney. The Department responded by filing a Petition to remove

³ Order entered September 23, 2008.

⁴ Motion to Compel Short Form Appraisal filed May 14, 2009; Petition to Compel Sale of Home and Payment to Department and Notice of Filing Appraisal Report and Addendum filed July 15, 2009.

⁵ Decision on Appeal entered May 25, 2010.

⁶ Filed June 22, 2010.

⁷ On appeal, Cathie argues she was never joined individually in the above-entitled action even though she became the owner of the home upon the termination of the life estate. However, Cathie cites the Court to no authority that supports her theory that she should have been joined individually. After Cathie was removed as personal representative of the Estate, the lower court allowed Cathie to fully participate in the proceedings, to be represented in her individual capacity by counsel, and to be heard in her individual capacity. Of primary importance on appeal is the fact Cathie never raised the issue of non-joinder before the lower court and, because the issue was never raised, it was never decided by the lower court. Therefore, the issue is not ripe for appeal.

Cathie as personal representative of the estate. Following a hearing on all pending matters, the magistrate court entered an Order removing Cathie as personal representative of her father's estate. The Order was appealed but was subsequently affirmed by the District Court on May 11, 2011. A court trial was then held on September 29, 2011. On December 22, 2011, the magistrate court entered its Memorandum Opinion and on January 10, 2012 entered an Order Re: Value of Estate Interest. In its Opinion, the lower court held the life estate remainder interest was an estate asset of value for purposes of Medicaid reimbursement and that its value was to be determined in compliance with IDAPA 16.03.05.837.01 (aka Rule 837). The lower court's Memorandum Opinion is now before this Court on appeal.

STANDARD OF REVIEW

Statutory interpretation is a question of law over which appellate courts exercise free review. *Dyet v. McKinley*, 139 Idaho 526, 529, 81 P.3d 1236, 1239 (2003).

The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

State v. Schulz, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011).

It is well established that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature. *Id.* Only where a statute is capable of more than one conflicting construction is it said to be ambiguous and invoke the rules of statutory construction. *L & W Supply Corp. v. Chartrand Family Trust*, 136 Idaho 738, 743, 40 P.3d 96, 101 (2002). If it is necessary for this Court to interpret a statute because an ambiguity exists, then this Court will attempt to ascertain legislative intent and, in construing the statute, may examine the language used, the reasonableness of the proposed interpretations, and the policy behind the statute. *Kelso & Irwin, P.A. v. State Ins. Fund*, 134 Idaho 130,

134, 997 P.2d 591, 595 (2000). Where the language of a statute is ambiguous, constructions that lead to absurd or unreasonably harsh results are disfavored. See *Jasso v. Camas Cnty.*, 151 Idaho 790, 798, 264 P.3d 897, 905 (2011).

Peck v. Idaho Dept. of Transportation, 153 Idaho 37, 46, 278 R.3d 439, 448 (Ct.App.2012).

ANALYSIS

At issue in the instant matter is whether the magistrate court erred when it ruled a life estate remainder interest must be assigned value by an estate for purposes of Medicaid recovery.⁸ The issue has not been addressed by Idaho's Supreme Court or Court of Appeals. The issue has been addressed in part by a magistrate judge in the Second Judicial District.⁹ In the instant matter, the magistrate judge stated in his Memorandum Opinion that he found the reasoning, rationale and conclusions of the Second Judicial District magistrate persuasive and correct and, therefore, incorporated the magistrate's opinion by reference. On appeal, this Court also finds the reasoning and analysis of the Second Judicial District magistrate judge persuasive and correct. In addition, the Court finds the analysis of the Idaho Supreme Court in *Idaho Dept. of Health & Welfare v. McCormick*, 283 P.3d 785 (2012) applicable to the instant matter.

In her argument asserting the lower court erred, Cathy relies on common law principles to support her position that the life estate has no value. Under the common law, at the death of one holding a life estate, the life estate ceases to exist and therefore has no value. While the common law espoused by Cathie is correct, her position fails to recognize that it is within the lawful power of the legislature to modify common law. *Kirkland v. Blaine County Medical Center*, 134 Idaho 464, 4 P.3d 1115 (2000).

⁸ The State asserts on appeal that Cathie may not appeal the issue of whether the life estate remainder interest in the home is an asset that must be inventoried and given value in the Estate for purposes of Medicaid reimbursement, as the issue is *res judicata* having been decided in a prior appeal in this matter. This Court does not find the issue *res judicata*. The lower court stated in its December 22, 2011 Memorandum Opinion, which is the subject of this appeal, that the primary issue before it was "whether the gifted life estate remainder interest can be included as an estate asset for the limited purpose of satisfying the State's unpaid Medicaid lien, pursuant to Idaho Code Section 56-218(4). Clearly the lower court did not find the issue had been decided in the prior appeal.

⁹ See *In the Estate of Grothe*, Nez Perce County Case No. CV02-02163, Magistrate Judge Jay Gaskill presiding.

Under Idaho's Public Assistance statutes, the provision for recovery of Medicaid benefits is found at I.C. § 56-218 and reads in pertinent part:

For purposes of this section, the term "estate" shall include:

- (a) All real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law; and
- (b) Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death, to the extent of such interest, including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

I.C. § 56-218(4).

In order to address the definition of "estate", as established by the legislature in I.C. § 56-218(4), it is necessary to look at the purpose behind the Medicaid program, and the recovery provisions under both federal and state law.

The Medicaid program is a "cooperative endeavor [with the states] in which the Federal Government provides financial assistance to participating States to aid them in furnishing health care to needy persons." *Harris v. McRae*, 448 U.S. 297, 308, 100 S.Ct. 2671, 2683, 65 L.Ed.2d 784, 799 (1980). Participating states enact legislation and rules, incorporate them into state medical assistance plans, and submit those plans to the U.S. Secretary of Health and Human Services (HHS) for approval. 42 U.S.C. § 1396a(a)-(b). Upon approval, the states receive federal payments for the program. 42 U.S.C. § 1396. As one of the many conditions for receipt of federal Medicaid funds, federal law specifically regulates when and to what extent states may recover for payments made to individuals. 42 U.S.C. § 1396p.

Idaho Department of Health & Welfare v. McCormick, 283 P.3d 785 (2012).

As was clearly noted by Idaho's Supreme Court in *McCormick*,

Medicaid has always been intended to be "the payer of last resort." *Arkansas Dep't of Health and Human Servs. v. Ahlborn*, 547 U.S. 268, 291, 126 S.Ct. 1752, 1767, 164 L.Ed.2d 459, 478 (2006) (quoting S.Rep. No. 99-146, at 313 (1985)). Accordingly, excess resources saved by virtue of Medicaid funds are meant to be tracked and recovered. *See Cohen v. Comm'r of Div. of Med. Assistance*, 423 Mass. 399, 668 N.E.2d 769, 772 (1996) (quoting H.R.Rep. No. 265, at 72 (1985)); H.R.Rep. No. 105(II), at 73 (1987) ("Medicaid—an entitlement program for the poor—should not facilitate the transfer of accumulated wealth from nursing home patients to their non-dependent children.").

Idaho Department of Health & Welfare v. McCormick, 283 P.3d 785 (2012).

Idaho's Supreme Court has recognized that the legislative purpose behind the Medicaid recovery statutes is to prevent individuals from transferring their assets to survivors, heirs, or assign, while at the same time benefiting from taxpayer funds intended to assist the poor.¹⁰

Looking to the overall purpose of the recovery statutes, Idaho's Supreme Court quoted the North Dakota Supreme Court in *In re Estate of Wirtz*, 607 N.W.2d 882, 885 (N.D.2000), which stated:

We conclude consideration of all the relevant statutory provisions, in light of the Congressional purpose to provide medical care for the needy, reveals a legislative intention *to allow states to trace the assets of recipients of medical assistance and recover the benefits paid when the recipient's surviving spouse dies.*

We hold any assets conveyed by [the recipient] to [the recipient's spouse] before [the recipient's] death and traceable to [the recipient's] estate are subject to the department's recovery claim. However, the recoverable assets do not include all property ever held by either party during the marriage. 42 U.S.C. § 1396p(b) contemplates only that assets in which the deceased recipient once held an interest will be traced. It does not provide that separately-owned assets in the survivor's estate, or assets in which the deceased recipient never held an interest, are subject to the department's claim for recovery.

607 N.W.2d at 886 (emphasis original) (citations omitted).

Idaho Department of Health & Welfare v. McCormick, 283 P.3d 785 (2012).

The reasoning of the Idaho Supreme Court in *McCormick* regarding the right to recover Medicaid benefits from assets *once* held by a Medicaid recipient is equally applicable when a recipient conveys real property to an heir, such as a non-dependent child, while retaining a life estate interest. Idaho Code § 56-218(4), which adopts nearly word for word the language found in 42 U.S.C. § 1396p(b)(1), defines "estate" for purposes of Medicaid recovery as any real property in which the individual had any legal title or interest at the time of death, *to include*

¹⁰ This purpose was also recognized by magistrate Judge Jay Gaskill in his opinion in *In the Estate of Grothe*, Nez Perce County Case No. CV02-2163, April 22, 2008: "Medicaid is intended to act as a safety net, not a free ride. Medicaid is not an avenue by which one can shift his or her financial burden for medical care to the American taxpayer, while a recipient's heirs enjoy a financial windfall."

assets conveyed to a survivor, heir, or assign through joint tenancy, tenancy in common, survivorship, life estate, living trust *or other arrangement*, a clear catch-all phrase. Contrary to the arguments of Cathie, “estate”, as defined in I.C. § 56-218(4), includes property conveyed during the Medicaid recipient’s lifetime as well as conveyances that occur at the time of death, i.e. the conveyance of a remainder interest upon the death of the holder of a retained life estate as in the instant matter. *Idaho Department of Health & Welfare v. McCormick*, 283 P.3d 785 (2012).

Idaho’s Supreme Court has clearly interpreted Idaho’s recovery statute as allowing the Department to look to “resources in which the recipient had an interest at one time but disposed of through her own actions or those of her spouse – such as a lifetime transfer of a home.” *Id.* In the instant matter, the real property owned by Melvin Peterson, which he disposed of through his own actions, is exactly the type of property conveyance Idaho’s Supreme Court has held subject to Medicaid recovery. The conveyance executed by Melvin Peterson falls squarely within the catch-all phrase “or other arrangement” used by Idaho’s legislature in I.C. § 56-218(4)(b). Melvin Peterson conveyed, free of any cost, a remainder interest of his residential real property to his daughter Cathie, retaining a life estate interest for himself, and did so well within the applicable look-back period provided for in IDAPA 16.03.05.286. The magistrate judge correctly found the transfer of the remainder interest¹¹ subject to Idaho’s Medicaid recovery

¹¹ The parties consistently referred to the life estate as the property interest to be valued. The lower court referred to the property interest to be valued as the life estate remainder interest. The correct interest to value for Medicaid recovery purposes is the property interest that was conveyed for less than fair market value, not the property interest retained. It is clear the magistrate court in the instant matter understood the property interest to be valued, as evidence by his Order that reads, “The value of the estate’s interest in the real property gift deeded to Cathie Peterson . . . shall be that proportion of the fair market value of the entire fee interest in the real property” Order Re: Value of Estate Interest filed January 10, 2012. This distinction was not made in the Second District case of *Grothe*, as the issue in *Grothe* was whether the Department could pursue its Medicaid recovery claim in the probate proceeding where its claim was against a non-probate property interest. In *Grothe*, both parties looked to the life estate interest as the subject of the Medicaid recovery claim and, therefore, did not raise for the court’s determination the issue of which property interest was properly subject to the Medicaid recovery claim.

statute and that the value of the remainder interest is to be determined pursuant to IDAPA 16.03.05.857.01 for purposes of the Department's Medicaid recovery claim.

Finally, the Court finds the magistrate court did not error in finding Cathie presented insufficient evidence to support her claim for unjust enrichment based on improvements she made to the real property at issue. The lower court correctly found the measure of damages is the difference between the fair market value of the real property before the improvements and the fair market value of the property after the improvements, not the cost of materials and labor expended for the improvements. See *Gillette v. Storm Circle Ranch*, 101 Idaho 663, 619 P.2d 1116 (1980) and *Nielson v. Davis*, 96 Idaho 314, 528 P.2d 196 (1974). Cathie presented no evidence on the property's fair market value before and after improvements.

The last issue to be addressed is the Department's request for attorney fees on appeal. The Court is unable to find Cathie acted without a reasonable basis in fact or law. The issue appealed by Cathie has yet to be addressed by Idaho's Supreme Court or Court of Appeals and, therefore, the Court cannot characterize Cathie's appeal as unreasonable.

ORDER

The Memorandum Opinion and Order Re: Value of Estate Interest entered by the magistrate court is hereby AFFIRMED.

The Department's request for an award of attorney fees on appeal is hereby DENIED.

Dated this 16 day of November 2012.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER was:

✓ hand delivered via court basket, or *faxed* ✓

 mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 16th day of November, 2012, to:

Brent Featherston
FAX: (208) 263-0400

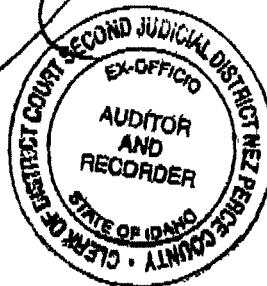
W. Cory Cartwright
FAX: (208) 334-6515

Boundary County District Court
FAX: (208) 267-7814

PATTY O. WEEKS, CLERK

By: *[Signature]*

Deputy




ORIGINAL

FILED

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2012 DEC 27 P 4: 22

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY  DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY**

In the Matter of the Estate of	)	CASE NO. CV-2007-00266
)	
MELVIN PETERSON,	)	NOTICE OF APPEAL
)	
Deceased.)	
_____)	

**TO: THE RESPONDENT IDAHO DEPARTMENT OF HEALTH AND WELFARE,
AND THE RESPONDENT'S ATTORNEY, W. COREY CARTWRIGHT,
DEPUTY ATTORNEY GENERAL AND THE CLERK OF THE ABOVE-
ENTITLED COURT**

**NOTICE IS HEREBY GIVEN THAT Cathie Peterson, individually, herein
APPELLANT, appeals pursuant to I.R.C.P. 83 and Idaho Code § 17-201, as follows:**

1. The above-named Appellant, Cathie Peterson, individually, appeals against the above-named Respondents to the Idaho Supreme Court from the Opinion and Order on Appeal of Magistrate Court's Ruling Re Medicaid Claim ("Opinion") entered in the above-entitled action on the 16th day of November, 2012, Honorable District Judge Jeff M. Brudie, presiding, and the Order Re: Value of Estate Interest, entered January 10, 2012, by Magistrate Justin Julian.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(2) and (b), I.A.R.

NOTICE OF APPEAL - 1

539

Featherston Law Firm ctd
Daniel P. Featherston
Brent C. Featherston*
Jeremy P. Featherston
Jeremi L. Ossman
Attorneys at Law

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* Licensed in
Idaho & Washington

3. A preliminary statement of the issues on appeal which the Appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal.

(a) Did the Court err in determining that Melvin's Life Estate is an asset subject to estate recovery under Idaho Code § 56-218(4)?

(b) Did the Court err in determining that Idaho law requires valuing a Life Estate "at the moment before death" as an asset of the decedent's estate?

(c) Did the Court err in determining that Idaho Code § 56-218 applies to life estates for Medicaid recovery purposes?

(d) Did the Court err in determining that Rule 837 is applicable in valuing a life estate at the time of the holder's death?

(e) Did the Court err in determining that this Court has subject matter jurisdiction to determine the issues before it?

(f) Did the Court err in determining that the Court has personal jurisdiction over Cathie Peterson?

(g) Did the Court err in determining that Cathie Peterson was not entitled to recoup her investment improving the property after taking title to the property from Melvin Peterson?

4. Has an order been entered sealing or any portion of the record? No.

5. (a) Is a reporter's transcript requested? Yes.

(b) The Appellant requests the preparation of the following portions of the reporter's transcript: Oral argument on October 12, 2012.

6. The Appellant requests the following documents to be included in the Clerk's Record in addition to those automatically included under Rule 28, I.A.R.: All exhibits admitted at hearing on September 29, 2011.

7. I certify:

(a) That a copy of this Notice of Appeal has been served on the court reporter.

(b) (1) That the Clerk of the District Court will be paid the estimated fee for the preparation of the reporter's transcript upon receipt of such estimate from the Court Reporter.

(c) (1) That the estimated fee for preparation of the clerk's record has been paid or will be paid upon receipt of such estimate.

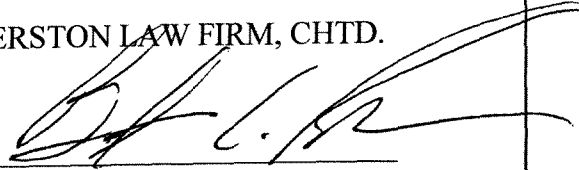
(d) (1) That the appellate filing fee has been paid.

(e) (1) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 22nd day of December, 2012.

FEATHERSTON LAW FIRM, CHTD.

By


BRENT C. FEATHERSTON
Attorney for Appellant Cathie Peterson

Featherston Law Firm csl

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Attorneys at Law

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Idaho & Washington

NOTICE OF APPEAL - 3

541

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of December, 2012, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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BY 

Featherston Law Firm cllc

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NOTICE OF APPEAL - 4

542

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FILED

2013 JAN 14 A 9:17

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY [Signature]
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate Of:	)	Supreme Court Docket No. 40615-2013
	)	Washington County Case No.
MELVIN PETERSON,	)	CV-2007-00266
)	
Deceased.	)	REQUEST FOR ADDITIONAL
_____	)	RECORD

TO: THE ABOVE NAMED PETITIONER-APPELLANT AND THE PARTY'S
ATTORNEY, AND THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN, that the Respondent in the above entitled proceeding hereby requests pursuant to Rule 19, I.A.R., the inclusion of the following material in the clerk's record in addition to that required to be included by the I.A.R. and the notice of appeal.

Additional clerk's record requested:

1. 07/26/2007 Application for Informal Probate and Appointment of a Personal Rep
2. 07/26/2007 Statement of Informal Probate and Appointment of a Personal Representative
3. 07/26/2007 Letters of Personal Representative

REQUEST FOR
ADDITIONAL RECORD - 1Y:\MRCases\Estate\WCC\WCC Open Cases\Peterson\Melvin\Supreme Court\Request for Additional Record.wpd

543

4. 11/19/2007 Demand for Notice
5. 11/19/2007 Claim Against Estate
6. 11/30/2007 Disallowance of Creditor's Claim and Request for Itemization
7. 12/10/2007 Amended Claim Against Estate
8. 12/10/2007 Petition for Allowance of Claim
9. 12/13/2007 Notice of Disallowance of Amended Claim Against Estate
10. 12/28/2007 Petition for Allowance of Amended Claim
11. 04/04/2008 Order Granting Petition for Allowance of Amended Claim
12. 05/05/2008 Petition to Require Payment of Claim
13. 05/05/2008 Brief in Support of Petition to Require Payment of Claim
14. 05/28/2008 Personal Representative's Inventory
15. 06/12/2008 Order on Petition to Require Payment of Claim
16. 07/15/2009 Notice of Filing Appraisal Report and Addendum
17. 07/15/2009 Petition to Compel Sale of Home and Payment to Department
18. 07/15/2009 Brief in Support of Petition
19. 08/11/2009 Order Granting Petition to Compel
20. 09/14/2009 Transcript Filed (7/28/09)
21. 09/14/2009 Transcript Filed (6/3/08)
22. 11/13/2009 Appellant's Brief
23. 12/14/2009 Respondent's Brief
24. 12/23/2009 Appellant's Reply Brief
25. 05/26/2010 Decision on Appeal
26. 06/23/2010 Amended Personal Representative's Inventory
27. 06/30/2010 Petition for Findings of Fact and Conclusions of Law
28. 09/22/2010 Petition for Removal of Personal Representative for Cause
29. 09/22/2010 Memorandum in Support of Petition for Removal
30. 10/07/2010 Order Removing Personal Representative
31. 11/22/2010 Transcript Filed (10/7/10 Petition & Motion)
32. 01/24/2011 Appellant's Brief
33. 02/25/2011 Respondent's Brief
34. 07/26/2011 Hearing result for Scheduling and Planning scheduled on 07/26/2011
35. 07/26/2011 Court Minutes Hearing type
36. 09/29/2011 Personal Representative's Requested Findings of Fact and Conclusions of Law
37. 11/07/2011 Closing Brief (Cartwright)
38. 11/18/2011 Cathy Peterson's Responsive Brief (Featherston)
39. 12/05/2011 Reply Brief (Cartwright)
40. 12/22/2011 Memorandum Opinion
41. 01/10/2012 Order re Value of Estate Interest
42. 03/15/2012 Transcript Filed
43. 05/31/2012 Appellant's Brief

REQUEST FOR

ADDITIONAL RECORD - 2Y:\MRCases\Estate\WCC\WCC Open Cases\PetersonMelvin\Supreme Court\Request for Additional Record.wpd

- 44. 06/21/2012 Respondent's Brief
- 45. 07/20/2012 Appellant's Reply Brief

I certify that this request for additional record has been served upon the clerk of the district court and upon the following parties required to be served pursuant to Rule 20.

Cathie Peterson,
C/O Brent C. Featherston, Attorney at Law, 113 South Second Avenue,
Sandpoint, ID 83864

DATED this 9th day of January, 2013.

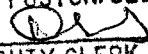


W. COREY CARTWRIGHT
Deputy Attorney General

TO: Clerk of the Court
Idaho Supreme Court
P.O. Box 83720
Boise, ID 83720-0101
Fax (208) 334-2616
sctfilings@idcourts.net

FILED

2013 FEB 28 P 2: 15

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY 
DEPUTY CLERK

RE: Docket No. 40615-13
Idaho Dept. of Health and Welfare V Peterson
Boundary County District Court No. CV 07-266

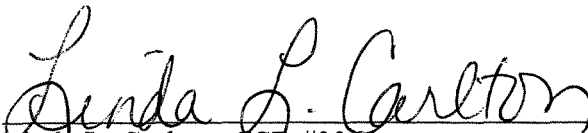
NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on February 27, 2013, I lodged a transcript of 52 pages in length for the above-referenced appeal with the District Court Clerk of the County of Boundary in the First Judicial District of the State of Idaho.

Included Hearings:

Motion Hearing October 12, 2012

An electronic copy was sent to the Supreme Court at sctfilings@idcourts.net.


Linda L. Carlton, CSR #336

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

IN THE MATTER OF THE ESTATE OF)	SUPREME COURT NO. 40615-2013
)	
MELVIN PETERSON	)	DISTRICT COURT NO. CV-2007-266
)	
DECEASED)	
-----	)	CERTIFICATE OF EXHIBITS
)	
IDAHO DEPARTMENT OF HEALTH)	
& WELFARE,)	
)	
Petitioner - Respondent,)	
)	
v.)	
)	
CATHIE PETERSON,)	
)	
Respondent - Appellant.)	
-----)	


I, Della A. Armstrong, Deputy Clerk of the District Court of the First Judicial District,
of the State of Idaho, in and for the County of Boundary, do hereby certify:

That the attached Exhibit List contains the exhibits which were offered or admitted
into evidence during the trial in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
said Court at Bonners Ferry, Idaho, this 10th day of March, 2013.



GLEND A POSTON
CLERK OF THE DISTRICT COURT

By 
Deputy Clerk

Date: 2/6/2013

Time: 12:14 PM

Page 1 of 1

First Judicial District Court - Boundary County

Exhibit Summary

User:
DARMSTRONG

Case: CV-2007-0000266

In The Matter Of The Estate Of Melvin Peterson Deceased

Sorted by Exhibit Number

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	Pet Ex A: 9-29-11 Court Trial - Copy Gift Deed, Peterson to Peterson 1 pg.	Admitted	Court File		
		Assigned to:	Cartwright, W. Cory		
2	Pet Ex B: 9-29-11 Court Trial - Copy IDAPA Rules & Tables, 3 pp.	Admitted	Court File		
		Assigned to:	Cartwright, W. Cory		
3	Resp Ex 1: 9-29-11 Court Trial - Manilla envelope containing 20 receipts for work, repair on residence	Admitted	Court File		
		Assigned to:	Featherston, Brent C.		
4	Resp Ex 2: 9-29-11 Court Trial - Copy of Warrant Deed, Strand to Peterson and Whitman, one page	Admitted	Court File		
		Assigned to:	Featherston, Brent C.		
5	Resp Ex 3: 9-29-11 Court Trial - Copy of Judgment, Peterson v. Whitman, CV 02-415, s pp.	Admitted	Court File		
		Assigned to:	Featherston, Brent C.		
6	Resp Ex 4: 9-29-11 Court Trial - Copy of Quitclaim Deed from Whitman to Peterson, 1 pg	Admitted	Court File		
		Assigned to:	Featherston, Brent C.		
7	Resp Ex 5: 9-29-11 Court Trial - Copy of Letter, with attachments, to Catherine Peterson, dtd 4-24-07, 8 pp.	Admitted	Court File		
		Assigned to:	Featherston, Brent C.		

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

IN THE MATTER OF THE ESTATE OF)	SUPREME COURT NO. 40615-2013
)	
MELVIN PETERSON	)	DISTRICT COURT NO. CV-2007-266
)	
DECEASED)	
-----	)	CLERK'S CERTIFICATE
)	
IDAHO DEPARTMENT OF HEALTH)	
& WELFARE,)	
)	
Petitioner - Respondent,)	
)	
v.)	
)	
CATHIE PETERSON,)	
)	
Respondent - Appellant.)	
-----)	

I, Della A. Armstrong, Deputy Clerk of the District Court of the First Judicial District, of the State of Idaho, in and for the County of Boundary, do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, full and correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that, in addition to the exhibits identified in the Reporter's Transcript, the following will be submitted as exhibits to this Record on Appeal:

1. Transcript of hearing held on June 3rd, 2008 on the Petition to Require Payment of Claim, filed on September 14th, 2009.
2. Transcript of hearing held on July 28th, 2009 on the Petition to Compel filed on

.....

CLERK'S CERTIFICATE

549

September 14th, 2009.

3. Transcript of hearing held on October 7th, 2010 on the Petition for Removal of Personal Representative and Motion to Strike, filed November 12th, 2010.

4. Transcript of Court Trial held on September 29th, 2011, filed on March 15th, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 15th day of March, 2013.

GLENDIA POSTON
CLERK OF THE DISTRICT COURT



By [Signature]
Deputy Clerk

.....

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

IN THE MATTER OF THE ESTATE OF	)	SUPREME COURT NO. 40615-2013
)	
MELVIN PETERSON	)	DISTRICT COURT NO. CV-2007-266
)	
DECEASED)	
-----	)	CLERK'S CERTIFICATE OF SERVICE
)	
IDAHO DEPARTMENT OF HEALTH)	
& WELFARE,)	
)	
Petitioner - Respondent,)	
)	
v.)	
)	
CATHIE PETERSON,)	
)	
Respondent - Appellant.)	
-----)	

I, Della A. Armstrong, Deputy Clerk of the District Court of the First Judicial District, of the State of Idaho, in and for the County of Boundary, do hereby certify that I have personally served or mailed, by United States Mail, postage prepaid, one copy of the Clerk's Record and any Reporter's Transcript to each of the parties or their Attorney of Record as follows:

BRENT FEATHERSTON
ATTORNEY FOR APPELLANT
113 SOUTH SECOND AVENUE
SANDPOINT, ID 83864

W. COREY CARTWRIGHT
ATTORNEY FOR RESPONDENT
PO BOX 83720 / 3276 ELDER ST.
BOISE, ID 83720-0009

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the
said Court this 1st day of March, 2013.



GLENDIA POSTON
CLERK OF THE DISTRICT COURT

By Della A. Armstrong
Deputy Clerk